TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 350.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

EDWARD S. THAYER.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JUNE 21, 1907.

(20703)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 390.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

EDWARD S. THAYER.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

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1 At a regular term of the United States District Court for the Northern District of Texas begun and holden at Dallas, Texas, on the first Monday in May, A. D. nineteen hundred and seven, which was the sixth day of said month, the grand jurors wherefor, good and lawful men, duly selected, impaneled, sworn and charged to inquire into and a true presentment make of all crimes and offenses cognizable under the authority of the laws of the United States of America, committed within the Northern District of Texas, upon their oaths present into open court that heretofore, to wit, on the twenty-seventh day of September, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and wilfully within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Robert Wood, an officer and employe of the United States, to wit, a clerk in the Internal Revenue Department of the United States for the Fourth District of Texas, in the discharge of official duties by him, the said Robert Wood, as such officer and employe, solicit a contribution of money for political purposes; that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and wilfully, within the district aforesaid, solicit a contribution of forty-five dollars for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican Party in the State of Texas, of and from the said Robert Wood, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Robert Wood, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of the said sum of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within
2 the building aforesaid, so occupied by the said Robert Wood in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had and made by him, the said Edward S. Thayer in the manner following, that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Robert Wood, within the said building so occupied by him, the said Robert Wood, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Texas, Sep. 27, 1906.*

"Mr. ROBT. WOOD.

"DEAR SIR: I has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our part in this State, and it devolves upon me, as

a member of the Republican State Executive Committee from your district to at once raise my pro rata of this fund.

"You are now occupying the position of deputy in U. S. rev. office at Dallas and receiving a salary of $900.00 per year. I therefore as you to at once, on receipt of this, remit the sum of $45.00, it being 5 per cent of your salary as dep. U. S. rev. officer.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party. The present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our efforts to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
"*6th Sen. District.*"

"I have this day remitted Cecil A. Lyon, 6th Dist., State chairman, Sherman, Texas, the sum of $ as per your request above.

"_____ _____,
"_____*Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said Robt. Wood, within the building so occupied by him, the said Robert Wood, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days return to
"E. S. Thayer, Terminal Bldg., Dallas, Tex.

"Dallas, Tex.,
"Sep. 27, 4.30 p. m., 1906.

"Mr. Robt. Wood, City.

"U. S. Int. Rev. Office."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid do further present into open court that heretofore, to wit, on the twenty-seventh day of September A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and wilfully, within

the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one William Carnes, a clerk and employe of the United States, to wit, chief clerk in the registry division of the United States post-office at Dallas, in the county of Dallas and State of Texas, the discharge of official duties by him, the said William Carnes, as such clerk and employe, solicit a contribution of money for political purposes; that is to
4 say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and wilfully, within the district aforesaid, solicit a contribution of sixty dollars for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purposes of furthering the interests of the Republican party in the State of Texas, of and from the said William Carnes, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said William Carnes, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of the said sum of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid so occupied by the said William Carnes in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had and made by him, the said Edward S. Thayer, in the manner following: that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said William Carnes within the said building so occupied by him, the said William Carnes, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
Dallas, Texas, Sep. 27, 1906.

"MR. WM. CARNES.

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me, a member of the Republican State Executive Committee from your district, to at once raise my pro rata of this fund.

"You are now occupying the position of div. supt. at Dallas post-office and receiving a salary of $1,200.00 per year. I therefore ask you to at once, on receipt of this, remit the sum of $60.00, it being 5% of your salary as dept. head.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party, the present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to *to* do your share towards aiding us

in our efforts to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"E. S. THAYER,

"*Member Republican State Executive Committee,*

5 "*6th Sen. District.*"

"I have this day remitted Cecil A. Lyon, State 6th dist. chairman, Sherman, Texas, the sum of $, as per your request above.

"———— ————,

"———, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said William Carnes within the building so occupied by him, the said William Carnes, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days return to "Dallas, Tex.,
"E. S. Thayer, Terminal Bldg., Dallas, Texas. "Sep. 27, 4.30 p. m., 1906.

"Wm. Carnes, esq., City.
"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and wilfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one William Carnes, a clerk and employe of the United States, to wit, chief clerk in the registry division of the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said William Carnes, as such clerk and employe, solicit a contribution of money for political purposes, that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the

6 venue aforesaid, did unlawfully, knowingly, and wilfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican

State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said William Carnes, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said William Carnes, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said William Carnes in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had made by him, the said Edward S. Thayer, in the manner following, that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said William Carnes, within the said building so occupied by him, the said William Carnes, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
Dallas, Oct. 15, 1906.

"Mr. WM. CARNES, *City.*

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me as a membe" of the Republican State Executive Committee from your district to at once raise my pro rata of this fund.

"You are now occupying the position of supt. in p. o. at Dallas and receiving a salary of $1,200.00 per year. I therefore ask you to once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important, as you know the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party. The present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below, and mail to my address.

"E. S. THAYER,

7 "*Member Republican State Executive Committee,*
6th Sen. Dist.

"If you are a civil service employee the contribution will be entirely voluntary, though nevertheless greatly appreciated.

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $ as per your request above.

"_____ _____,
"_____, *Texas.*"

which said letter was delivered by the said United States mail facilities to and was read by the said William Carnes, within the building so occupied by him, the said William Carnes, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days return to
"———, Dallas, Tex.

" Dallas, Tex.,
" Oct. 15, 4.30 p. m., 1906.

" Mr. Wm. Carnes, City.

" P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and wilfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Percy B. Clower, a clerk and employe of the United States, to wit, a distributor in the United States post-office at Dallas, in the county of Dallas and
8 State of Texas, in the discharge of his official duties by him, the said Percy B. Clower, as such clerk and employe, solicit a contribution of money for political purposes—that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and wilfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Percy B. Clower, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Percy B. Clower, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Percy B. Clower in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had, and made by him, the said Edward S. Thayer, in the manner following—that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Percy B.

Clower, within the said building so occupied by him, the said Percy B. Clower, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT.
"*Dallas, Tex., Oct. 15, 1906.*

"Mr. P. B. CLOWER.

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me, as a member of the Republican State Executive Committee from your district, to at once raise my pro rata of this fund.

"You are now occupying the position of employee, P. O. Dept. at Dallas and receiving a salary of $800.00 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party. The present State Executive
9 Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below, and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
6th Sen. Dist.

"If you are a civil service employee the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"———— ———,
"————, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said Percy B. Clower within the building so occupied by him, the said Percy B. Clower, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following to wit:

"After 10 days, return to
"———— Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. P. B. Clower, City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and wilfully, within the jurisdiction of this court, to wit, in the city and county of Dallas,
10 State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Albert Deputy, an employe of the United States, to wit, a letter carrier in the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Albert Deputy, as such employe, solicit a contribution of money for political purposes; that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and wilfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Albert Deputy, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Albert Deputy, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Albert Deputy in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had, and made by him, the said Edward S. Thayer, in the manner following, that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Albert Deputy, within the said building so occupied by him, the said Albert Deputy, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
Dallas, Tex., Oct. 15, 1906.

"Mr. ALBERT DEPUTY.

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended
11 in furthering the interests of our party in this State, and it devolves upon me, as a member of the Republican State Executive Committee from your district, to at once raise my prorata of this fund.

"You are now occupying the position of employee, P. O. Dept., at Dallas, and receiving a salary of $850.00 per year. I therefore ask

you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party, the present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
"*6th Sen. Dist.*

"If you are a civil-service employee, the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"———,
"———, *Texas.*"

which said letter was delivered by the said United States mail facilities to and was read by the said Albert Deputy within the building so occupied by him, the said Albert Deputy, as aforesaid, and the said letter was enclosed in envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After ten days return to
"———, Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. Albert Deputy,
City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the
12 fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and wilfully, within the jurisdiction of this court, to wit, in the city and county of

Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Glenn L. Minter, an employee of the United States, to wit, a letter carrier in the post-office of the United States at the city of Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Glenn L. Minter, as such employee, solicit a contribution of money for political purposes—that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and wilfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas of and from the said Glenn L. Minter, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Glenn L. Minter, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Glenn L. Minter in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had, and made by him, the said Edward S. Thayer, in the manner following—that is to say, by then and there placing in the mails of the United States for delivery to and ready by the said Glenn L. Minter, within the said building so occupied by him, the said Glenn L. Minter, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT.

"*Dallas, Oct. 15, 1906.*

13 "Mr. GLENN L. MINTER,

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me as a member of the Republican State Executive Committee from your district to at once raise my pro rata of this fund.

"You are now occupying the position of employee P. O. Dept. at Dallas and receiving a salary of $850.00 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party, the present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below, and mail to my address.

"E. S. THAYER,

"*Member Republican State Executive Committee, 6th Sen. Dist.*

"If you are a civil service employee, the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $ as per your request above.

"_____ _____,

"_____, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said Glenn L. Minter within the building so occupied by him, the said Glenn L. Minter, as aforesaid and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days return to
"_____, Dallas, Texas.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. Glenn L. Minter,
City,

"P. O. Dept."

14 all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SEVENTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and wilfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Walter M. Scott, a clerk and employee of the United States, to wit, a nixie clerk in the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Walter M. Scott, as such clerk and employee, solicit a contribution of money for political purposes—that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and wilfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in

the State of Texas, of and from the said Walter M. Scott, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Walter M. Scott, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Walter M. Scott in the discharge of his official duties aforesaid, which said solicitation was then and there affected, had, and made by him, the said Edward S. Thayer, in the manner following—that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Walter M. Scott, within the said building so occupied by him, the said Walter M. Scott, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Tex., Oct. 15, 1906.*

"Mr. W. M. SCOTT,

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me as a member of the Republican State Executive Committee from your district to at once raise my pro rata of this fund.

"You are now occupying the position of employee P. O. Dept. at Dallas, Texas., and receiving a salary of $900 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party, the present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below, and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
6th Sen. Dist.

"If you are a civil service employee the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $ as per your request above.

"_____ _____,
"_____, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said Walter M. Scott within the bulding so occupied by him, the said Walter M. Scott, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp upon which envelope was the following, to wit:

"After 10 days, return to
"———, Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

16 "Mr. W. M. Scott, City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

EIGHTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court, that heretofore, to wit, on the fifteenth day of October, A. D. 1906, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and wilfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, county and State aforesaid, which said building was then and there occupied by one Frank Miller, a clerk and employe of the United States, to wit, a distributor in the United States post-office at Dallas, in the county of Dallas, and State of Texas, in the discharge of official duties by him, the said Frank Miller, as such clerk and employe, solicit a contribution of money for political purposes—that is to say, he, the said Edward S. Thayer, on the date aforesaid and within the venue aforesaid, did unlawfully, knowingly, and wilfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Frank Miller, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Frank Miller, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money
17 for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Frank Miller in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had and made by him, the said Edward S. Thayer, in the manner following—that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Frank Miller, within the said building so occupied by

him, the said Frank Miller, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Tex., Oct. 15, 1906.*

"Mr. FRANK MILLER.

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me, as a member of the Republican State Executive Committee from your district, to at once raise my pro rata of this fund.

"You are now occupying the position of employee P. O. Dept. at Dallas and receiving a salary of $800 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party. The present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittances to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
"*6th Sen. Dist.*"

"If you are a civil-service employee, the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"_____ _____,
"_____, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said Frank Miller within the building so occupied by him, the said Frank Miller, as aforesaid, and the
18 said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days, return to
"_____, Dallas, Tex."

"DALLAS, TEX.,
"Oct. 15, 4.30 p. m., 1906."

"Mr. Frank Miller, City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

NINTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and wilfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Charles C. Brooks, an employe of the United States, to wit, a letter carrier in and for the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Charles C. Brooks, as such employe, solicit a contribution of money for political purposes—that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and wilfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Charles C. Brooks, who was
19 then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Charles C. Brooks, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer within the building aforesaid, so occupied by the said Charles C. Brooks in the discharge of his official duties aforesaid, which said solicitation was then and there affected, had and made by him, the said Edward S. Thayer, in the manner following—that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Charles C. Brooks, within the said building so occupied by him, the said Charles C. Brooks, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Tex., Oct. 15, 1906.*

"MR. CHAS. C. BROOKS.

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me as a member of the Republican State Executive Committee from your district to at once raise my prorate of this fund.

"You are now occupying the position of employee, P. O. Dept., at Dallas, Tex., and receiving a salary of $850.00 per year. I, therefore, ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party, the present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman, Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below, and mail to my address.

"E. S. THAYER,

"*Member Republican State Executive Committee, 6th Sen. Dist.*

"If you are a civil-service employee the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil S. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"———— ————,

"————, *Texas.*"

20 which said letter was delivered by the said United States mail facilities to, and was read by, the said Charles C. Brooks, within the building so occupied by him, the said Charles C. Brooks, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days return to
"————, Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. Chas. C. Brooks, City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

TENTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and wilfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Walter B. Luna, a clerk and employe of the United States, to wit, chief stamp clerk in the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Walter B. Luna, as

such clerk and employe, solicit a contribution of money for political purposes—that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and wilfully within the district aforesaid solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for
21 the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Walter B. Luna, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Walter B. Luna, which official duties and place of performance thereof was well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done, as aforesaid, by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Walter B. Luna, in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had, and made by him, the said Edward S. Thayer, in the manner following, that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Walter B. Luna, within the said building so occupied by him, the said Walter B. Luna, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, T., Oct. 15, 1906.*

"Mr. W. B. LUNA, *City.*

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me as a member of the Republican State Executive Committee from your district to at one raise my prorata of this fund.

"You are now occupying the position of supt. in P. O. at Dallas and receiving a salary of $1,500.00 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party. The present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
"*6th Sen. Dist.*

22 If you are a civil-service employee, the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted to Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"———— ————,

"————, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and read by, the said Walter B. Luna within the building so occupied by him, the said Walter B. Luna, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days, return to
"————, Dallas, Tex."

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906."

"Mr. W. B. Luna, City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

ELEVENTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and wilfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Henry B. Goodnight, a clerk and employe of the United States, to wit, a distributor in the United States post-office at Dallas, in the county of Dallas and

23 State of Texas, in the discharge of official duties by him, the said Henry B. Goodnight, as such clerk and employe, solicit a contributor of money for political purposes, that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and wilfully, within the district aforesaid, solicit a contributor of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas of and from the said Henry B. Goodnight, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Henry B. Goodnight, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as

aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Henry B. Goodnight in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had and made by him, the said Edward S. Thayer, in the manner following, that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Henry B. Goodnight, within the said building so occupied by him, the said Henry B. Goodnight, at Dallas, Texas, a letter in the following words and figures to wit:

6TH REPUBLICAN SENATORIAL DISTRICT,
Dallas, Oct. 15, 1906.

"Mr. HENRY B. GOODNIGHT.

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me as a member of the Republican State Executive Committee from your district to at once raise my prorata of this fund.

24 "You are now occupying the position of employee, P. O. Dept., at Dallas, and receiving a salary of $700.00 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party, the present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
6th Sen. Dist.

"If you are a civil-service employee, the contribution will be entirely voluntary, though nevertheless greatly appreciated.

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, the sum of $, as per your request above.

"_____ _____,
"_____, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and read by, the said Henry B. Goodnight, within the building so occupied by him, the said Henry B. Goodnight, as aforesaid, and the said letter was enclosed in an envelope bearing a two-

cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days return to
"———, Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. Henry B. Goodnight, City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

W. I. YOPP,
Foreman of the Grand Jury.

WM. H. ATWELL,
District Attorney.

25 (Endorsed as follows:) No. 1048. United States of America vs. Edward S. Thayer. Indictment. A true bill. W. I. Yopp, foreman. Presented and filed in open court this 6th day of May, 1907. Louis C. Maynard, clerk, by H. W. Rhodes, deputy. William H. Atwell, United States attorney.

26 In the District Court of the Northern District of Texas, at Dallas.

UNITED STATES
vs.
EDWARD S. THAYER. } No. 1048.

Now comes the defendant, by attorneys, and demurs to the bill of indictment filed herein, and for grounds of demurrer specified that said bill of indictment is insufficient, because:

First. The alleged facts set forth in said bill of indictment constitute no offense against the laws of the United States.

Second. Said bill of indictment fails to charge, with sufficient certainty, that the defendant was present in or about the building in which the alleged solicitations are charged to have occurred when they occurred.

Third. Said bill fails to charge, with sufficient certainty, that the alleged persons occupying the rooms and building in which the alleged solicitations are charged to have occurred were officers or employes of the United States mentioned in the act of Congress creating the offense.

And of these demurrers the defendant prays the judgment of the court, and he prays that the said bill of indictment be quashed and for naught held, and as in duty bound defendant will ever pray.

H. CHILTON and
ETHERIDE & MCCORMICK,
Attorneys for Defendant.

(Endorsed:) No. 1048 United States vs. Edward S. Thayer. Demurrers to indictment. Filed 22 day of May, 1907. Louis C. Maynard, clerk, by C. B. Price, deputy.

27 From the minutes of the District Court for the Northern District of Texas, at Dallas.

UNITED STATES OF AMERICA
vs.
EDWARD S. THAYER. } No. 1048.

WEDNESDAY, *May 22d, 1907.*

On this day came on to be heard the above entitled and numbered cause, and the plaintiffs, being in court by their district attorney, William H. Atwell, and by special assistants to the Attorney-General, Henry C. Lewis and David D. Caldwell, announced ready for trial, and thereupon came the defendant, Edward S. Thayer, in person and with his attorneys, and announced ready for trial, and the court being informed that certain demurrers had been filed by the defendant, Edward S. Thayer, announced that the demurrers would first be heard and considered, and thereupon the defendant presented his demurrers to the bill of indictment and argument by plaintiffs, and defendant was heard upon said demurrers by the court; at the conclusion of which presentation and argument the court announced that he would take the issues presented therein under advisement.

28 From the minutes of the District Court of the United States for the Northern District of Texas, at Dallas. May term, 1907.

UNITED STATES OF AMERICA
vs.
EDWARD S. THAYER. } No. 1048.

MONDAY, *June 17, 1907.*

On this day came on to be further heard and considered the above-styled and numbered cause, and whereas, on Wednesday, May twenty-second, all parties, plaintiffs and defendant, announced ready for trial, and did submit to the court the defendant's demurrers, and the court heard argument thereon and took the same under advisement; and the court having now duly deliberated upon the said demurrers, the arguments, and the law pertaining thereto, is of the opinion that demurrers numbered one and two are well taken, and that the law is with the defendant thereon; that demurrer No. three is not well taken, and that the law is with the plaintiffs thereon.

It is therefore the judgment, order, and decree of the court that the demurrers numbered one and two be sustained, and that the indictment be abated, quashed, and set aside and dismissed, because the same alleges no offense against the laws of the United States, and because the same fails to allege that at the time of the alleged solicitation therein set forth the defendant, Edward S. Thayer, was in the building of the United States at Dallas, Texas.

It is so ordered, adjudged, and decreed, and the costs hereof will be taxed against the plaintiffs; to which action of the court the plaintiffs, the United States of America, by their district attorney for the Northern District of Texas, William H. Atwell, duly and seasonably in open court except.

29 In the District Court of the United States for the Northern District of Texas, at Dallas.

THE UNITED STATES
v.
EDWARD S. THAYER. } No.

This case is before me on demurrers interposed to the indictment, which contains eleven counts. Each count charges the defendant with a separate violation of the provisions of section 12 of the act of January 18, 1883, known as the "civil service act." All the counts are based upon alleged acts of the defendant so similar in character and effect that, for the purpose of passing upon the demurrers interposed, it will suffice to consider and discuss the allegations of a single count.

The charging part of the first count is in part as follows:

30 "The said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and wilfully, within the district aforesaid, solicit a contribution of forty five dollars for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Robert Wood, who was then and there occupying the said United States post-office building at Dallas, Texas, in discharge of the official duties aforesaid of him, the said Robert Wood, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of the said money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Robert Wood in the discharge of his official duties as aforesaid, which said solicitation was then and there effected, had, and made by him, the said Edward S. Thayer, in the manner following—that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Robert Wood, within the said building so occupied by him, the said Robert Wood, at Dallas, Texas, a letter in the following words and figures, to wit:

"'6TH REPUBLICAN SENATORIAL DISTRICT,
"'*Dallas, Texas, Sep. 27, 1906.*

"'Mr. ROBT. WOOD.

"'DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me, as a member of the Republican State Executive Committee from your district, to at once raise my pro rata of this fund.

"'You are now occupying the position of deputy in the U. S.
31 rev. office at Dallas, and receiving a salary of $900.00 per year. I therefore ask you to at once, on receipt of this, remit the sum of $45.00, it being 5 per cent of your salary as dep. U. S. rev. officer.

"'This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party, the present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our efforts to build up an organization which will be a credit to all.

"'Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"'E. S. THAYER,
"'*Member Republican State Executive Committee,*
"'*6th Sen. District.*

"'I have this day remitted Cecil A. Lyon, 6th Dist. State chairman, Sherman, Texas, the sum of $, as per your request above.

"'_____ _____,
"'_____, *Texas.*'

"which said letter was delivered by the said United States mail facilities to, and was read by, the said Robert Wood within the building occupied by him, the said Robert Wood, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

32 "'After 10 days return to
"'E. S. Thayer, Terminal Bldg., Dallas, Texas.

"'Dallas, Texas,
"'Sep. 27, 4.30 p. m., 1906.

"'Mr. Robt Wood, City.

"'U. S. Int. Rev. Office.'

"all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America."

The defendant interposes the following demurrers to the indictment:

"First. The alleged facts set forth in said bill of indictment constitute no offense against the laws of the United States.

"Second. Said bill of indictment fails to charge, with sufficient certainty, that the defendant was present in or about the building in which the alleged solicitations are alleged to have occurred.

"Third. Said bill fails to charge, with sufficient certainty, that the alleged persons occupying the rooms and building in which the alleged solicitations are charged to have occurred were officers or

employes of the United States mentioned in the act of Congress creating the offense."

Section 12 of the "Civil Service Act" is as follows:

"That no person shall, in any room or building occupied in the discharge of official duties by any officer or employe of the
33 United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit, in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever."

The question is, whether the facts alleged in the counts of the indictment fall within the denunciation of this section and constitute a violation of its provisions. The language used by the Congress is clear and explicit, and there does not seem to be much necessity or room for judicial interpretation to arrive at its meaning and intent. Yet, to determine whether the facts here alleged are within its meaning and intent is not without difficulty. From a consideration of this indictment and the divergent views expressed by opposing counsel at the hearing and in briefs, I am impressed with the profound truth of the observations of Dwarris: "Nearly every case is, in reality, a complex one, and because the various relations of men are forever changing, and because the individuality of utterances, with the expressions of ideas, is dependent upon uniformity of mental endowments as well as uniformity of culture, which are seldom or never to be found. Interpretation never has been, it never can be, dispensed with. It is a necessity that lies in the very nature of things, and will remain so long as the character of the human mind is diversified and language remains imperfect." (Potter's Dwarris on Statutes and Constructions, page 116.)

Notwithstanding the "Civil Service Act" has been a part of our statute law since January 16, 1883, there has been, so far as I
34 can find, no construction of the provisions of section 12 by any of our courts. The object of the entire act, as given expression in its caption, is "To regulate and improve the civil service of the United States." Section 11 prohibits the direct or indirect soliciting or receiving by officers and employes of the United States of any assessment, subscription, or contribution for any political purpose whatever, from any of its officers, clerks, or employes. It also prohibits their being in any manner concerned in such soliciting or receiving. The prohibitions of this section reach and apply to only those who are in the employ of the Government. Other persons than these are not included in nor affected by its provisions, but are left free to solicit and to receive contributions from officers and employes of the Government for political purposes.

Section 12, however, prohibits every person from the pursuit of these activities in any room or building occupied in the discharge of official duties by any officer or employe of the United States mentioned in the "Civil Service Act," or in any navy-yard, fort, or arsenal. It is plain that the place of solicitation or of receiving is the gravamen of the offense under the provisions of this section. For a

person other than those named in section 11 to solicit or receive money from any officer or employe mentioned in the act for a political purpose is no offense. To solicit in any manner whatever, or to
35 receive any money for a political purpose from any person in a prohibited room or building, is an offense.

A fair reading and construction of the charging part of the indictment leads to the conclusion that it was not intended to charge that the defendant Thayer was personally present in or about the United States post-office building at Dallas when he made the alleged solicitation, and it was conceded by the Government on the argument that he was not so personally present, but that, being absent therefrom, he wrote a letter for this purpose to Robert Wood, and enclosing it in a stamped envelope, deposited it in the United States mail for transmission and delivery to the addressee. Did such acts on the part of the defendant constitute an unlawful solicitation within the meaning of section 12? As set forth the solicitation was comprised of at least four distinct acts or steps, each of which was necessary to its accomplishment; first, the writing of the letter by Thayer; second, the depositing of it in the mail; third, its transmission and delivery by the mail facilities; fourth, the reading of the letter by the addressee, Robert Wood.

There can be no question as to the character of the letter. It is a solicitation to the extent of being an importunate demand. The effort in composition seems to have been to impress the addressee that a certain authority was vested in the writer, an authority wholly lacking in point of fact. Unaccustomed familiarity with the terms of employment is displayed. The position and exact salary of Wood are stated and then, as though it followed as a logical sequence, he is asked to at once remit the sum of $45.00, it being five per cent of his salary as deputy revenue officer. The letter impresses me as an unwarranted request, made in an offensively importunate manner.

But Thayer had the legal right to make such solicitation from Wood. It was manifestly no violation of the law to write such a letter; nor to place it in the mail for transmission and delivery to the addressee; nor for the latter to receive it into his hands,
36 even in the United States post-office building at Dallas. If this series of acts culminated in the commission of an offense, it was because the letter was read by Wood in this building. Such reading was the consummation of the solicitation, and if such consummation rendered the defendant guilty of an offense it was because it imparted to each and all of the acts in the series looking to such consummation a criminal design.

The design to do unlawfully that which he could in any other than the prohibited places do lawfully, are to be gathered and inferred alone from the placing on the envelope in which the letter was enclosed "U. S. Int. Rev. Office," for this is all the defendant is charged to have done looking to the reading of the letter in the proscribed precincts.

When, in contemplation of law, did the letter cease to be the prop-

erty of the defendant, and for whom was the post-office establishment acting in forwarding and delivering it? By quite a uniform line of decisions it is held that after a letter is placed in the post-office it passes out of the control of the sender and into that of the person to whom it is directed, and the postmaster or the Post-Office Department is his agent to forward the letter to him. American & Eng. Enc. of Law, 2nd ed., vol. 22, 1057; U. S. v. Nutt, Fed. Cases, 15, 904; Com. v. Wood, 142 Mass., 459; Regina v. Jones, 4 Cox C. C., 198; Kennedy v. Dr. David Kennedy Corp. (Supm. Court, Spec. T.), 32 Misc. (N. Y.), 480.

37 If this be true, the defendant was not the owner and had no control over the letter after it was confided by him to the mails of the United States. Thereafter it was the property of the addressee and in the possession of his agent for forwarding. The agent may have been assisted and guided in the delivery of the letter by the notation on the envelope. Nevertheless, the delivery at the place whereof was the act of the agent of the addressee, and not the act of the defendant or of the latter's agent. Therefore, the letter was not carried into nor delivered to the addressee in the building by the defendant or by any one acting for him.

It is manifest that the main purpose of an address is to reveal identity and location so as to insure certain and promptness of delivery. It would be going far to say that particularity of address was indulged in a given case for the purpose of controlling and fixing the place in which a letter should be read; that by placing on the envelope in addition to "Mr. Robt. Wood, City," the notation "U. S. Int. Rev. Office," the writer could be charged with entertaining a criminal design to accomplish and consummate the solicitation in a proscribed precinct.

38 The place of reading a letter is a matter entirely within the control and discretion of the addressee and entirely beyond the control of the writer. So that, according to the contention of the Government, a person is guilty of a violation of law or he is not guilty according as the addressee may exercise his discretion and pleasure by reading the letter of solicitation within the proscribed precincts or without them.

A construction of a criminal statute enacted in derogation of our natural rights which converts acts otherwise innocent into offenses through the subsequent and independent act of another party should not, in my opinion, be entertained.

But, in any event, could there be a violation of the provisions of section 12 without the personal presence in the prohibited place of the one soliciting or receiving? It is true the section does not read "that no person shall, being in a room or building," but a close analysis of the language of the section, and a consideration of its purpose and object, seem to me to give support to this view. As stated, the gravamen of the offense is soliciting or receiving in designated places, to wit, "in any room or building occupied in the discharge of official duties by any officer or employe of the United States

mentioned in this act, or in any navy-yard, fort, or arsenal." The section does not alone make it an offense to solicit or receive from any officer or employe of the United States within the prohibited
38½ places. Under its plain language it is an offense to solicit or receive from any person within these places. This being true, it would be a violation of the act for A to solicit or receive a contribution from B in the United States post-office building at Dallas, even though B was not connected in any manner, either by service or employment, with the United States. If the contention of the Government were correct, if B should receive such a letter of solicitation in that building, addressed to him in care of the general delivery, and read it there, the writer would be guilty of violating this law. Congress could not have had any such result as this in contemplation, nor does such result tend to promote the expressed object of the act "to improve the civil service." On the other hand, Congress may well and wisely have intended to protect not only officers and employes of the Government, but the public as well, from the personal intrusions and importunities of solicitors in precincts under its control. This would also be in consonance with the object of the act.

Two offenses are created and denounced by this section: The offense of soliciting and that of receiving. These are correlative offenses, mutually related in significance. One is not likely to receive without having solicited. To receive contributions in a place one must personally be present, or, at least, be present through another. It may be that by placing these two offenses in such close apposition
39 the Congress intended that personal presence, which was a necessary element of the offense of receiving, should also be a necessary element of the offense of soliciting, although this does not logically or necessarily follow. However, the conviction is strong with me that all the essential elements of the solicitation, whatever they may be, should be enacted within the prohibited precincts before there can be a violation of this law.

It is a well-settled rule that courts should so construe statutes "as to meet the mischief and advance the remedy." What was the mischief to be met by this enactment? It seems to me to be revealed by the provisions of section 11. If I mistake not, it was to guard and protect employes against official pressure on the part of their superiors. Section 11 designates specifically the officers and employes who may not in any place or in any manner solicit or receive, or be interested in soliciting or receiving, from any officer or employe of the Government any contribution for political purposes. It would have been a futile and vain thing to have enacted the provisions of section 11 and left the doors and entrances of the Government offices, buildings, and reservations open to the friends and party associates of officers and employes that they might enter to solicit and receive contributions from inferiors under the very eye and with the countenance of their superiors. With such conditions obtaining, pressure and coercion could still be exercised in a form most odious. Hence the necessity for the enactment of section 12. When the exclusion of the

person of the solicitor is accomplished pressure and coercion
40 are rendered impossible, at least in the prohibited precincts.

The act itself should be sounded for its intent and meaning, and these should be gathered therefrom; yet, owing to the direct bearing certain of the deliberations of the Senate of the United States have upon the question now under consideration, I feel justified in at least making reference to them here.

Section 12 being under consideration by the Senate, an amendment coming in the nature of an amendment to an amendment was offered, which "Provided, That the sending by mail or otherwise to any such officer or employe of any letter, or note, whether written or printed, containing such solicitation, shall be held to be a solicitation prohibited by this section." This amendment was rejected. This action seems to shed light upon the intention of the Congress. It may be said the amendment was rejected because the acts designated by it were already covered by the general language of the section. If it was the intention to include the use of the mails, the adoption of the amendment would have made it plain and unmistakable; without the amendment, such intention is matter of gravest doubt.

"Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to
41 avoid. Before a man can be punished his case must be plainly and unmistakably within the statute." (U. S. v. Brewer, 139 U. S., 288.) While it is the duty of courts to so construe statutes as "to meet the mischief and advance the remedy," that duty should not lead to the inclusion of a gravely doubtful case.

Without entering upon any extended consideration of the objection raised by the third demurrer, above set forth, I will overrule it. Demurrers numbered one and two will be sustained.

Opinion. Filed 17th day of June. Louis C. Maynard, clerk. By C. B. Price, deputy.

42 In the United States District Court for the Northern District of Texas.

UNITED STATES OF AMERICA *vs.* EDWARD S. THAYER.	No. 1048.

Be it remembered that upon the trial of the above styled and numbered cause the following proceedings were had, and none other, to wit:

On the sixth day of May, A. D. 1907, a duly constituted grand jury returned into the United States District Court for the Northern District of Texas the following bill of indictment, to wit:

At a regular term of the United States District Court for the Northern District of Texas, begun and holden at Dallas, Texas, on the first Monday in May, A. D. nineteen hundred and seven, which was the sixth day of said month, the grand jurors wherefor, good and lawful men, duly selected, impaneled, sworn and charged to inquire

into and a true presentment make of all crimes and offenses cognizable under the authority of the laws of the United States of America, committed within the Northern District of Texas, upon their oaths present into open court that heretofore, to wit, on the twenty-seventh day of September, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and willfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Robert Wood, an officer and employe of the United States, to wit, a clerk in the Internal Revenue Department of the United States for the Fourth District
43 of Texas, in the discharge of official duties by him the said Robert Wood as such officer and employe, silicit a contribution of money for political purposes, that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and willfully, within the District aforesaid, solicit a contribution of forty-five dollars for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Robert Wood, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Robert Wood, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of the said sum of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Robert Wood in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had and made by him the said Edward S. Thayer in the manner following, that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Robert Wood, within the said building so occupied by him, the said Robert Wood, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Texas, Sep. 27, 1906.*

"MR. ROBT. WOOD.

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me, as a member of the Republican State Executive Committee from your district, to at once raise my pro rata of this fund.

"You are now occupying the position of deputy, in U. S.
44 rev. office, at Dallas, and receiving a salary of $900.00 per year. I therefore ask you to at once, on receipt of this, remit

the sum of $45.00, it being 5% of your salary as dep. U. S. rev. officer.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party, the present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our efforts to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
"*6th Sen. District.*"

"I have this day remitted Cecil A. Lyon, 6th Dist. State chairman, Sherman, Texas, the sum of $, as per your request above.

"———— ————,
"————, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said Robert Wood within the building so occupied by him, the said Robert Wood, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days return to
"E. S. Thayer, Terminal Bldg., Dallas, Texas.

"Dallas, Tex.,
"Sep. 27, 4.30 p. m., 1906.

"Mr. Robt. Wood, City.

"U. S. Int. Rev. Office."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid,
45 do further present into open court that heretofore, to wit, on the twenty-seventh day of September, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and willfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and

State aforesaid, which said building was then and there occupied by one William Carnes, a clerk and employe of the United States, to wit, chief clerk in the registry division of the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him the said William Carnes as such clerk and employe, solicit a contribution of money for political purposes; that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and willfully, within the district aforesaid, solicit a contribution of sixty dollars for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said William Carnes, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said William Carnes, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of the said sum of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said William Carnes in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had, and made by him, the said Edward S. Thayer, in the manner following; that is to say,

by then and there placing in the mails of the United States for
46 delivery to and reading by the said William Carnes, within the said building so occupied by him, the said William Carnes, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
Dallas, Texas, Sep. 27, 1906.

"Mr. WM. CARNES.

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me, as a member of the Republican State Executive Committee from your district, to at once raise my pro rata of this fund.

"You are now occupying the position of div. supt. at Dallas post-office and receiving a salary of $1,200.00 per year. I therefore ask you to at once, on receipt of this, remit the sum of $60.00, it being 5 % of your salary as dept. head.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party. The present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our efforts to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, Republican State Execu-

tive Committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
"*6th Sen. District.*

"I have this day remitted to Cecil A. Lyon, 6th dist., State chairman, Sherman, Texas, the sum of $ as per your request above.
" ——— ———,
"———, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said William Carnes within the building so occupied by him, the said William Carnes, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days, return to
"E. S. Thayer, Terminal Bldg.

"Dallas, Tex.,
Sep. 27, 4.30 p. m., 1906.

"Wm. Carnes, Esq.,
"City.

"P. O. Dept."

47 all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and willfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one William Carnes, a clerk and employe of the United States, to wit, chief clerk in the registry division of the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said William Carnes, as such clerk and employe, solicit a contribution of money for political purposes, that is to say, he, the said Edward S. Thayer, on the date aforesaid and within the venue aforesaid, did unlawfully, knowingly, and willfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said William Carnes, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said William Carnes, which official

duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the
48 aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said William Carnes in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had made by him, the said Edward S. Thayer, in the manner following, that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said William Carnes, within the said building so occupied by him, the said William Carnes, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Oct. 15, 1906.*

"Mr. WM. CARNES, *City.*

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me, as a member of the Republican State Executive Committee from your district, to at once raise my pro rata of this fund.

"You are now occupying the position of supt. in P. O. at Dallas and receiving a salary of $1,200.00 per year. I therefore ask you to once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party, the present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
"*6th Sen. Dist.*

"If you are a civil-service employee, the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"_____ _____,
"_____, *Texas.*"

which said letter was delivered by the said United States mail
49 facilities to, and was read by, the said William Carnes, within the building so occupied by him, the said William Carnes, as

aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days return to
"———, Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. Wm. Carnes,

"City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas division of the Northern District of Texas, did unlawfully, knowingly, and willfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Percy B. Clower, a clerk and employe of the United States, to wit, a distributor in the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Percy B. Clower, as such clerk and employe, solicit a contribution of money for political purposes—that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and willfully, within the district aforesaid, solicit a
50 contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Percy B. Clower, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Percy B. Clower, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Percy B. Clower, in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had, and made by him, the said Edward S. Thayer, in the manner following—that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Percy B. Clower, within the said

building so occupied by him, the said Percy B. Clower, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Tex., Oct. 15, 1906.*

"Mr. P. B. CLOWER.

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me, as a member of the Republican State Executive Committee from your district, to at once raise my pro rata of this fund.

"You are now occupying the position of employee P. O. Dept. at Dallas and receiving a salary of $800.00 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party, the present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

51 "Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below, and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
"*6th Sen. Dist.*

"If you are a civil-service employee the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"———— — · ——,
"————, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said Percy B. Clower within the building so occupied by him, the said Percy B. Clower, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days, return to
"———— Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. P. B. Clower, City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and willfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Albert Deputy, an employe of the United States, to wit, a letter carrier in the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Albert Deputy, as such employe, solicit a contribution of money for political purposes—that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and willfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Albert Deputy, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid, of him, the said Albert Deputy, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Albert Deputy in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had, and made by him, the said Edward S. Thayer, in the manner following—that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Albert Deputy, within the said building so occupied by him, the said Albert Deputy, at Dallas, Texas, a letter in the following words and figures, to wit:

52

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Tex., Oct. 15, 1906.*

"Mr. ALBERT DEPUTY.

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me, as a member of the Republican State Executive Committee from your district, to at once raise my pro rata of this fund.

53

"You are now occupying the position of employee P. O. Dept. at Dallas and receiving a salary of $850.00 per year. I therefore

ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party, the present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below, and mail to my address.

"E. S. THAYER,

"*Member Republican State Executive Committee, 6th Sen. Dist.*

"If you are a civil-service employee the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $ as per your request above.

"_____ _____,

"_____, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said Albert Deputy within the building so occupied by him, the said Albert Deputy, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days return to
"_____, Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. Albert Deputy, City.

"P. O. Dept."

All of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

54 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and willfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Glenn L. Minter, an

employe of the United States, to wit, a letter carrier in the post-office of the United States at the city of Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Glenn L. Minter, as such employe, solicit a contribution of money for political purposes—that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and willfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Glenn L. Minter, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Glenn L. Minter, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Glenn L. Minter in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had, and made by him,
55 the said Edward S. Thayer, in the manner following—that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Glenn L. Minter, within the said building so occupied by him, the said Glenn L. Minter, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Oct. 15, 1906.*

"MR. GLENN L. MINTER.

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me as a member of the Republican State Executive Committee from your district to at once raise my pro rata of this fund.

"You are now occupying the position of employee P. O. Dept. at Dallas and receiving a salary of $850.00 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party. The present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican

State Executive Committee, Sherman, Texas, and fill out and detach the coupon below, and mail to my address.

"E. S. THAYER,

"*Member Republican State Executive Committee,*
6th Sen. Dist.

"If you are a civil-service employee, the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"———— ————,
"————, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said Glenn L. Minter within the building so occupied by him, the said Glenn S. Minter, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

56 "After 10 days, return to
"————, Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. Glenn L. Minter,
"City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SEVENTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and willfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Walter M. Scott, a clerk and employe of the United States, to wit, a nixie clerk in the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Walter M. Scott, as such clerk and employe, solicit a contribution of money for political purposes, that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and willfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State

of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Walter M. Scott, who was then and there occupying the said United
57 States post-office building at Dallas Texas, in the discharge of the official duties aforesaid, of him, the said Walter M. Scott, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid, by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Walter M. Scott, in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had, and made by him, the said Edward S. Thayer, in the manner following, that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Walter M. Scott, within the said building so occupied by him, the said Walter M. Scott, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Tex., Oct. 15, 1906.*

"Mr. W. M. SCOTT.

"DEAR SIR: It has become necessary for the Republican State executive committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me as a member of the Republican State Executive Committee from your district to at once raise my pro rata of this fund.

"You are now occupying the position of employee P. O. Dept. at Dallas, Tex., and receiving a salary of $900.00 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party. The present State executive committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State executive committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee, 6th Sen. Dist.*

"If you are a civil-service employee, the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"———— ————,
"————, *Texas.*"

58 which said letter was delivered by the said United States mail facilities to, and was read by, the said Walter M. Scott within the building so occupied by him, the said Walter M. Scott, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days return to
"———, Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. W. M. Scott,
"City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

EIGHTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and willfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Frank Miller, a clerk and employe of the United States, to wit, a distributor in the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Frank Miller, as such clerk and employe, solicit a contribution of money for political purposes—that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and willfully, within the district afore-

59 said, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Frank Miller, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Frank Miller, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose were made and had and done, as aforesaid, by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Frank Miller in the discharge of his official

duties aforesaid, which said solicitation was then and there effected, had, and made by him, the said Edward S. Thayer, in the manner following—that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Frank Miller, within the said building so occupied by him, the said Frank Miller, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Tex., Oct. 15, 1906.*

"Mr. FRANK MILLER.

"DEAR SIR: It has become necessary for the Republican State executive committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me, as a member of the Republican State executive committee from your district, to at once raise my pro rata of this fund.

"You are now occupying the position of employee P. O. Dept. at Dallas, and receiving a salary of $800.00 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party. The present State executive committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

60 "Send your remittance to Cecil A. Lyon, chairman Republican State executive committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
"*6th Sen. Dist.*

"If you are a civil-service employee, the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"_____ _____,
"_____, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said Frank Miller within the building so occupied by him, the said Frank Miller, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent

United States postage stamp, upon which envelope was the following, to wit:

"After 10 days return to
"———, Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. Frank Miller,

"City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

NINTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and willfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid,
61 which said building was then and there occupied by one Charles C. Brooks, an employe of the United States, to wit, a letter carrier in and for the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Charles C. Brooks, as such employe, solicit a contribution of money for political purposes, that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and willfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Charles C. Brooks, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Charles C. Brooks, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Charles C. Brooks in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had, and made by him, the said Edward S. Thayer, in the manner

following, that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Charles C. Brooks, within the said building so occupied by him, the said Charles C. Brooks, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Tex., Oct. 15, 1906,*

"Mr. CHAS. C. BROOKS,

"DEAR SIR: It has become necessary for the Republican State executive committee to raise a campaign fund to be ex-
62 pended in furthering the interests of our party in this State, and it devolves upon me as a member of the Republican State executive committee from your district to at once raise my pro rata of this fund.

"You are now occupying the position of employee P. O. Dept. at Dallas, Tex., and receiving a salary of $850.00 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party. The present State executive committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State executive committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee, 6th Sen. Dist.*

"If you are a civil-service employee, the contribution will be entirely vountary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"_____ _____,
"_____, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said Charles C. Brooks, within the building so occupied by him, the said Charles C. Brooks, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days, return to
"_____, Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. Charles C. Brooks,
"City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

63 TENTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and willfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Walter B. Luna, a clerk and employe of the United States, to wit, chief stamp clerk in the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Walter B. Luna, as such clerk and employe, solicit a contribution of money for political purposes; that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and willfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas, and for the purpose of furthering the interests of the Republican party in the State of Texas of and from the said Walter B. Luna, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Walter B. Luna, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Walter B. Luna in the discharge of his official duties aforesaid,

64 which said solicitation was then and there effected, had and made by him, the said Edward S. Thayer, in the manner following; that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Walter B. Luna, within the said building so occupied by him, the said Walter B. Luna, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, T., Oct 15, 1906.*

"Mr. W. B. LUNA, *City.*

"DEAR SIR: It has become necessary for the Republican State executive committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me, as a member of the Republican State executive committee from your district, to at once raise my pro rata of this fund.

"You are now occupying the position of supt. in P. O. at Dallas, and receiving a salary of $1,500.00 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party. The present State executive committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State executive committee, Sherman, Texas, and fill out and detach the coupon below, and mail to my address.

"E. S. THAYER,
"*Member Republican State Executive Committee,*
"*6th Sen. Dist.*

"If you are a civil-service employee, the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"_____ _____,
"_____, Texas."

which said letter was delivered by the said United States mail facilities to, and was read by, the said Walter B. Luna within the building so occupied by him, the said Walter B. Luna, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

65 "After 10 days, return to
"_____, Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. W. B. Luna,
"City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

ELEVENTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open court that heretofore, to wit, on the fifteenth day of October, A. D. nineteen hundred and six, one Edward S. Thayer, now or late of the Dallas Division of the Northern District of Texas, did unlawfully, knowingly, and willfully, within the jurisdiction of this court, to wit, in the city and county of Dallas, State

aforesaid, in a certain building there situate, to wit, the United States post-office building at Dallas, county and State aforesaid, which said building was then and there occupied by one Henry B. Goodnight, a clerk and employe of the United States, to wit, a distributor in the United States post-office at Dallas, in the county of Dallas and State of Texas, in the discharge of official duties by him, the said Henry B. Goodnight, as such clerk and employe, solicit a contribution of money for political purposes; that is to say, he, the said Edward S. Thayer, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and willfully, within the district aforesaid, solicit a contribution of money for political purposes, to wit, for the purpose of conducting the Republican State campaign in the State of Texas,
66 and for the purpose of furthering the interests of the Republican party in the State of Texas, of and from the said Henry B. Goodnight, who was then and there occupying the said United States post-office building at Dallas, Texas, in the discharge of the official duties aforesaid of him, the said Henry B. Goodnight, which official duties and place of performance thereof were well known to him, the said Edward S. Thayer, which said solicitation of money for the aforesaid purpose was made and had and done as aforesaid by him, the said Edward S. Thayer, within the building aforesaid, so occupied by the said Henry B. Goodnight in the discharge of his official duties aforesaid, which said solicitation was then and there effected, had, and made by him, the said Edward S. Thayer, in the manner following; that is to say, by then and there placing in the mails of the United States for delivery to and reading by the said Henry B. Goodnight, within the said building so occupied by him, the said Henry B. Goodnight, at Dallas, Texas, a letter in the following words and figures, to wit:

"6TH REPUBLICAN SENATORIAL DISTRICT,
"*Dallas, Oct. 15, 1906.*

"Mr. HENRY B. GOODNIGHT.

"DEAR SIR: It has become necessary for the Republican State Executive Committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me as a member of the Republican State Executive Committee from your district to at once raise my prorata of this fund.

"You are now occupying the position of employee, P. O. Dept., at Dallas and receiving a salary of $700.00 per year. I therefore ask you to at once, on receipt of this, remit any amount you may feel disposed to contribute.

"This is very important. As you know, the Terrell election law prohibits all Federal officeholders from holding any position in the political affairs of our party. The present State Executive Committee is composed of nonofficeholders, and who have no favors to ask or friends to reward, and are working solely for the good of the cause, and it is incumbent upon you to do your share towards aiding us in our effort to build up an organization which will be a credit to all.

"Send your remittance to Cecil A. Lyon, chairman Republican State Executive Committee, Sherman, Texas, and fill out and detach the coupon below, and mail to my address.

"E. S. THAYER,

"*Member Republican State Executive Committee,*
6th Sen. Dist.

"If you are a civil-service employee the contribution will be entirely voluntary, though nevertheless greatly appreciated."

"I have this day remitted Cecil A. Lyon, State chairman, Sherman, Texas, the sum of $, as per your request above.

"———— ————,

"————, *Texas.*"

which said letter was delivered by the said United States mail facilities to, and was read by, the said Henry B. Goodnight within the building so occupied by him, the said Henry B. Goodnight, as aforesaid, and the said letter was enclosed in an envelope bearing a two-cent United States postage stamp, upon which envelope was the following, to wit:

"After 10 days, return to
"———— Dallas, Tex.

"Dallas, Tex.,
"Oct. 15, 4.30 p. m., 1906.

"Mr. Henry B. Goodnight, City.

"P. O. Dept."

all of which acts of him, the said Edward S. Thayer, were contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

W. I. YOPP,
Foreman of the Grand Jury.

WM. H. ATWELL,
District Attorney.

On Wednesday, May 22, 1907, the said cause of the United States against Edward S. Thayer as founded on said bill of indictment came regularly on for trial, and all parties plaintiffs and defendant agreed
68 that the defendant Thayer, at the time of making the alleged solicitation, was not in the said building at Dallas, Texas; and the defendant interposed duly filed and certified demurrers to the said bill of indictment in the following words:

In the District Court of the Northern District of Texas, at Dallas.

UNITED STATES
vs.
EDWARD S. THAYER. } No. 1048.

Now comes the defendant, by attorneys, and demurs to the bill of indictment filed herein, and, for grounds of demurrer, specifies that said bill of indictment is insufficient, because:

First. The alleged facts set forth in said bill of indictment constitute no offense against the laws of the United States.

Second. Said bill of indictment fails to charge, with sufficient certainty, that the defendant was present in or about the building in which the alleged solicitations are charged to have occurred when they occurred.

Third. Said bill fails to charge, with sufficient certainty, that the alleged persons occupying the rooms and building in which the alleged solicitations are charged to have occurred were officers or employes of the United States mentioned in the act of Congress creating the offense.

And of these demurrers the defendant prays the judgment of the court, and he prays that the said bill of indictment be quashed and for naught held, and as in duty bound defendant will ever pray.

H. CHILTON and
ETHERIDGE & MCCORMICK,
Attorneys for Defendant.

69 And the said demurrers having been duly argued and presented to the court by the parties plaintiff and defendant, the court took the same under advisement, and thereafter, on, to wit, Monday, June seventeenth, A. D. 1907, rendered and entered the following judgment and decree, to wit:

On this day came on to be further heard and considered the above styled and numbered cause, and whereas, on Wednesday, May twenty-second, all parties plaintiffs and defendant announced ready for trial, and did submit to the court the defendant's demurrers and the court heard argument thereon and took the same under advisement, and the court having now duly deliberated upon the said demurrers, the arguments and the law pertaining thereto, is of the opinion that demurrers numbered one and two are well taken, and that the law is with the defendant thereon; that demurrer No. three is not well taken, and that the law is with the plaintiffs thereon.

It is therefore the judgment, order, and decree of the court that demurrers numbered one and two be sustained and that the indictment be abated, quashed, and set aside and dismissed, because the same alleges no offense against the laws of the United States, and because the same fails to allege that at the time of the alleged solicitation therein set forth the defendant Edward S. Thayer was in the building of the United States at Dallas, Texas.

It is so ordered, adjudged, and decreed, and the costs hereof will be taxed against the plaintiffs, to which action of the court the plaintiffs, the United States of America, by their district attorney for the Northern District of Texas, William H. Atwell, duly and seasonably, in open court, except.

70 To which action and judgment and decree of the court the plaintiffs, by their United States district attorney, William H. Atwell, excepted in open court, and still except, and pray that this bill of exception be duly signed and made a part of the record, for which the plaintiffs will ever pray.

The said judgment and decree upon the said demurrers quashing, setting aside, and dismissing the bill of indictment herein being based upon a construction of section twelve of the so-called civil-service act of the United States of America, which construction of the court required the personal presence of the defendant, Thayer, within the Government building at Dallas, Texas, at the time of the alleged solicitation before Thayer would subject himself to the penalties of the statute, and that the sending of a letter by the said Thayer to an employe in the said building at Dallas, Texas, soliciting a political contribution, was not within the penalty of the statute.

The above and foregoing bill of exception is here now settled, signed, approved, and ordered made a part of the record in the above styled and numbered case.

Witness my hand, this 26th day of June, A. D. 1907.

EDWARD R. MEEK,
United States District Judge for the Northern District of Texas.

The clerk is hereby ordered to send up with this record the opinion rendered on the demurrers herein.

EDWARD R. MEEK,
United States District Judge.

This bill and writ of error allowed under act of March 2, 1907, because the judgment of the court is upon a construction of a statute against the contention of the United States.

EDWARD R. MEEK,
United States District Judge.

71 The foregoing has the following endorsement, to wit: 1048. U. S. vs. Edward S. Thayer. Bill of exceptions. Filed 26 day of June, 1907. Louis C. Maynard, clerk.

72 United States District Court, Northern District of Texas.

UNITED STATES OF AMERICA
vs.
EDWARD S. THAYER. } No. 1048.

Assignments of error by the United States.

Of May term in the year of our Lord nineteen hundred and seven, and

Afterwards, to wit, on the seventeenth day of June, in the same term, comes the United States of America, by William H. Atwell, their proper district attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit:

(1) That defendant's first and second demurrers are neither sufficient nor good in law.

(2) The court erred in holding that section twelve of the act of the so-called civil-service law of the United States did not inhibit the soliciting by letter of political contributions within a Federal building from an employe therein performing his official duties.

(3) The court erred in holding that the demurrers numbered one and two directed against the bill of indictment were well taken because the alleged solicitation for a political contribution was not made in person by the defendant within the precincts of a Federal building.

(4) The court erred in holding that section twelve of the act of the so-called civil-service law did not inhibit the soliciting by letter of contributions for political purposes.

There is also error in this, to wit, that by the record aforesaid, to wit, by the bill of indictment and the two demurrers, it appears that the judgment upon the said demurrers was given for the defendant, the said Edward S. Thayer, and against the plaintiffs, the United States of America, whereas by the law of the land the said judgment ought to have been given for the said United States of America and against the said Edward S. Thayer, and the said United States of America pray that the judgment be reserved, annulled, and altogether held for nothing.

73 WM. H. ATWELL,
United States Attorney for the Northern District of Texas.

(Endorsed:) No. 1048. U. S. vs. E. S. Thayer. Assignment of errors. Filed 26 day of June, 1907. Louis C. Maynard, clerk.

74 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judge of the Northern District of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between the United States of America and Edward S. Thayer, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of June, in the year of our Lord one thousand nine hundred and ninety-seven.

LOUIS C. MAYNARD,
Clerk of the District Court of the United States for the Northern District of Texas.

Allowed by—
EDWARD R. MEEK,
U. S. District Judge.

(Indorsed:) No. 1048. U. S. vs. E. S. Thayer. Writ of error. Filed 26th day of June, 1907. Louis C. Maynard, clerk.

75 UNITED STATES OF AMERICA, ss:
To Edward S. Thayer, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the U. S. District Court of Northern District of Texas, wherein the United States of America are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Edward R. Meek, judge of the District Court of the United States, this 26 day of June, in the year of our Lord one thousand nine hundred and ninety-seven.

[SEAL.] LOUIS C. MAYNARD,
Clerk U. S. District Court, Northern D. of Texas.

On this 27th day of June, in the year of our Lord one thousand nine hundred and seven, personally appeared Geo. H. Green, U. S. marshal, before me, the subscriber, C. B. Price, deputy clerk U. S. District Court, and makes oath that he delivered a true copy of the within citation to Edward S. Thayer, in person, at Dallas, Tex.

GEO. H. GREEN,
United States Marshal, Northern D. of Texas.

Sworn to and subscribed the 27 day of June, A. D. 1907.
[SEAL.] C. B. PRICE,
Deputy Clerk United States District Court, N. D. of Texas.

(Indorsed:) No. 1048. Marshal's docket No. 4349. United States vs. Edward S. Thayer. Citation in error. Filed 26 day of June, 1907. Louis C. Maynard, clerk.

76 THE UNITED STATES OF AMERICA,
Northern District of Texas.

I, Louis C. Maynard, clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct copy of the proceedings in cause No. 1048, United States vs. Edward S. Thayer, save and except that the original citation in error and writ of error are included therein instead of copies thereof.

Witness my hand and seal of office this the 8th day of July, A. D. 1907.

[SEAL.] LOUIS C. MAYNARD, *Clerk.*
By C. B. PRICE, *Deputy.*

77 (Indorsement on cover:) File No. 20793. N. Texas, D. C. U. S., Term No. 390. The United States, plaintiff in error, vs. Edward S. Thayer. Filed July 11th, 1907. File No. 20793.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
EDWARD S. THAYER. } No. 390.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

MOTION TO ADVANCE.

The Solicitor-General, on behalf of the United States, respectfully moves the court to advance the above-entitled cause for hearing at an early day convenient to the court.

Defendant in error was indicted on May 6, 1907, for violation of section 12 of the civil-service act of January 18, 1883 (22 Stat., 403, 407), which prohibits the soliciting or receiving of political contributions in any room or building occupied, in the discharge of official duties, by any officer or employee of the United States mentioned in the act. The indictment contained eleven counts, each charging the defendant with a separate violation of the act, in soliciting by letter contributions of money for politi-

cal purposes, in the post-office building at Dallas, Tex., from certain employees of the post-office and internal-revenue office.

Demurrers to the indictment were interposed on the ground that (1) the facts set forth did not constitute an offense against the United States; (2) that the indictment failed to allege that the defendant was *in* the building where the solicitations were charged to have occurred; (3) that it failed to charge that the persons solicited for contributions were officers or employees of the United States mentioned in the civil-service act. The District Court overruled the third demurrer, but sustained the first and second, holding that there could be no violation of the provisions of section 12 of the act without the personal presence *in* the prohibited place of the one soliciting or receiving. Thereupon the United States sued out a writ of error in accordance with the act of March 2, 1907 (34 Stat., 1246), which provides that a writ of error may be taken by the United States from the district or circuit courts direct to the Supreme Court in all criminal cases, in the following instance, among others:

> From a decision or judgment, quashing, setting aside, or sustaining a demurrer to any indictment, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment is founded.

This motion to advance is submitted for the reason that the case, being a criminal one, is entitled to

advancement under Rule 26, section 3, and that the act of March 2, 1907, provides that writs of error in cases under it "shall be diligently prosecuted and shall have precedence over all other cases."

Furthermore, it is important to the public to know the limitations upon solicitations of contributions for political purposes. It is understood, also, that other similar cases are pending awaiting the determination of this case.

HENRY M. HOYT,
Solicitor-General.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

UNITED STATES, PLAINTIFF IN ERROR,
v.
EDWARD S. THAYER. } No. 390.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The defendant in error, who was also the defendant below, was indicted in the District Court for the Northern District of Texas for violation of section 12 of the civil-service act (22 Stat., 403), which reads as follows:

THE STATUTE.

> That no person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever.

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FACTS.

The facts, as set forth in the indictment, are as follows:

The defendant, Thayer, mailed letters addressed to certain employees of the United States at their official places of business in the post-office building at Dallas, Tex., soliciting contributions to the Republican campaign fund.

It is conceded that Thayer was not physically present in the post-office building at the time it is charged that the solicitation was made. The letters on which the indictment is based were placed in the mails and delivered in the ordinary course of business. It is conceded, also, that the addressees received and read these letters in the Federal building.

The defendant demurred to the indictment on the following grounds:

First. The alleged facts set forth in said bill of indictment constitute no offense against the laws of the United States.

Second. Said bill of indictment fails to charge, with sufficient certainty, that the defendant was present in or about the building in which the alleged solicitations are charged to have occurred when they occurred.

A third ground of demurrer was overruled and need not be considered here.

The demurrer was, however, sustained on the first and second grounds, and the United States brought the case to this court upon a writ of error.

ISSUE.

The issue raised by the pleadings is whether a letter asking for a political contribution, mailed to a Government employee, in a Government building, and received and read by him there, is a *solicitation* within the meaning of section 12 of the civil service act.

ARGUMENT.

The first effort to stop by legislation the levying of political assessments was made in 1867. In the naval appropriation act of that year it was provided that no officer or employee of the Government should require or request any workingman in any navy-yard to contribute any money for a political purpose. The act further forbade discrimination for political reasons and made removal from the service the penalty for a violation of the provisions of the act. (Sec. 1546, R. S.)

This act of Congress was part of a general movement to eradicate or diminish certain evils to which it will be necessary to refer in order to understand the purposes of the civil-service law of 1883.

That law is the result of fifty years' effort to reform conditions which were regarded as detrimental to efficiency in the public service and inconsistent with sound political morality.

To discuss intelligently the question raised in the case at bar, it is necessary to consider the "mischief and defect for which the law" prior to 1883 "did not provide" and "the remedy appointed to cure the disease of the Commonwealth." (*Heydon's Case*, 2 Coke's Rep., Frazier's Ed., p. 19.)

I.

The Purpose of the Act.

It seems to have been taken for granted by the framers of the Constitution that appointing officers in selecting subordinates would be influenced solely by a patriotic desire to secure for the public service competent and honest men, and that removals would be made only for reasons affecting the efficiency of the service.

Hamilton in speaking of the possible danger of undue influence being exerted on the legislature by the executive said:

> But fortunately the Constitution has provided a still further safeguard. The members of Congress are rendered ineligible to any civil offices that may be created, or of which the emoluments may be increased during the term of their election. No offices, therefore, can be dealt out to the existing members but such as may become vacant by ordinary casualties. (Federalist, No. 55.)

The idea that members of Congress or others might be influenced by a corrupt use of public patronage does not seem to have occurred to any one.

Madison said that the wanton removal of a meritorious officer was an impeachable offense.

(Gale's Annals of Congress, 1 Cong., 1 Sess., p. 372.)

This high standard was maintained by the first six Presidents.

(Report of Mr. Jenckes of Rhode Island, from Joint Select Committee on Retrenchment. H. R. No. 47, 40th Cong., 2d sess.)

Appointments and removals were made for reasons affecting the efficiency of the service, and the political opinions or activities of officeholders or applicants for office were not questioned.

"The change which commenced with the Presidency of General Jackson is too well known to need description, and is summed up in the single phrase, 'To the victor belong the spoils.' This means that the entire force of the civil service of the United States may be changed for mere political opinion without any regard to the qualifications or the meritorious services of the person in office or the person seeking office." (Jenckes Report, p. 5.)

The disastrous results of the introduction of political considerations into the selection of purely administrative officers at once became apparent.

Those results were:

1. The removal of tried and experienced men.

2. The filling of vacancies thus created with inexperienced men frequently of low character.

3. The creation of unnecessary offices to satisfy the demands of party workers.

4. The maintaining at public expense of persons who rendered little or no service to the public.

5. The diversion of public funds to party use by means of assessments levied on Government officers and employees. (H. R. No. 47, 40th Cong., 2d sess.; S. R. No. 576, 47th Cong., 1st sess.)

Report of Curtis Civil Service Commission to President Grant. Orations and Addresses of George William Curtis, vol. 11, p. 31.

The party in power thus had at its disposal an organized army of retainers maintained at public expense and a vast fund drawn from salaries paid by the Government for service to be rendered the public.

Against this spoils system the best and ablest men in public life repeatedly raised their voices in protest. Calhoun, Clay, and Webster in the debate on the confirmation of Van Buren as minister to England in 1832; Calhoun in his report on the extent of Executive patronage on February 9, 1835; Garret Davis in the report of a special committee, Thirty-second Congress, July 27, 1842; the report of the Committee on Retrenchment, May 23, 1842; Senator Morehead in a report of the Committee on Retrenchment, July 15, 1844—all condemned the system.

The first step for reform came in 1853. By the acts of March 3 of that year and of March 3, 1855, which were subsequently incorporated into the Revised Statutes as section 164, it was provided that—

> No clerk shall be appointed in any Department in either of the four classes above designated until he has been examined and found qualified by a board of three examiners, to consist of the chief of the bureau or office into which such clerk is to be appointed and two other clerks to be selected by the head of the Department.

These acts provided for a system of pass or non-competitive examinations, but they were ineffectual in accomplishing any practical result.

The act of 1867, referred to above, followed, and in 1868 a committee of the House of Representatives reported through Mr. Jenckes, of Rhode Island (H. R. 47, 48th Cong., 2d sess.) on the urgent necessity for reform.

In 1871, on the recommendation of President Grant, Congress passed an act which was subsequently incorporated into the Revised Statutes as section 1753, which reads as follows:

> The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service.

Acting under the authority invested in him by this section of the Revised Statutes, the President appointed a Civil Service Commission, headed by George William Curtis, of New York, which adopted rules and held examinations until 1874, when Congress declined to make any further appropriation for their work.

In 1876 Congress attempted to deal in a more comprehensive way with the question of political assessments. Chapter 287, section 6, of the laws of that year (19 Stat., p. 169) provided:

> That all executive officers or employees of the United States, not appointed by the President, with the advice and consent of the Senate, are prohibited from requesting, giving to or receiving from any other officer or employee of the Government, any money or property or other thing of value for political purposes; and any such officer or employee, who shall offend against the provisions of this section shall be at once discharged from the service of the United States; and he shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five hundred dollars.

This prohibition applied to only a limited number of executive officers and employees of the United States, leaving all others free to indulge in the evil practice. The constitutionality of this act was upheld in *Ex Parte Curtis* (16 Otto, 371).

In 1841 the following circular was issued:

> DEPARTMENT OF STATE,
> *March 20, 1841.*
>
> SIR: The President is of opinion that it is a great abuse to bring the patronage of the General Government into conflict with the freedom of elections, and that this abuse ought to be corrected wherever it may have been permitted to exist, and to be prevented for the future.

He therefore directs that information be given to all officers and agents in your Department of the public service that partisan interference in popular elections, whether of State officers or officers of this Government, and for whomsoever or against whomsoever it may be exercised, *or the payment of any contribution or assessment on salaries, or official compensation for party or election purposes, will be regarded by him as cause of removal.*

* * * * *

I have the honor to be, sir, your obedient servant,

DANIEL WEBSTER.

Hon. THOMAS EWING,
Secretary of the Treasury.

On April 16, 1872 (14th Report Civil Service Commission, p. 55), and on May 26, 1877 (14th Report Civil Service Commission, p. 57), respectively, Presidents Grant and Hayes issued orders forbidding the levying of political assessments.

This was the condition existing at the time the Pendleton committee submitted the draft of the bill which was the basis of the present civil service act. (See Sen. Rept. No. 576, 47th Cong., 1st sess.) The bill as originally introduced, simply provided for the appointment of a Civil Service Commission which should assist the President in making rules. These rules were to provide for the classification of certain positions and the filling of those positions through open competitive examinations. The bill was silent

on the subject of political assessments except for a provision that no one in the public service was for that reason under any obligation to contribute to any political fund or render any political service. There was a very full debate in the Senate covering generally the condition of the executive civil service, and several Senators called attention to the evil of political assessments as an inherent part of the "spoils" system. (See Cong. Rec. vol. 14, part 1; pp. 319, 320, 326, 364, 462, 504.)

On December 21, 1882, Senator Cockrell, of Missouri, stated that subsequent to the enactment of the law of 1876 forbidding political assessments, the Republican party continued "regular circulars every two years, calling upon all employees of the Government for contributions, * * * in violation of the spirit of the law of 1876." He then presented a number of assessment circulars which, it was charged, were sent to Government employees. (Cong. Rec., vol. 14, p. 521.) On December 23rd the debate was continued, and Senator Hawley, of Connecticut, who had the bill in charge, introduced an amendment, one section of which was similar, word for word, to section 12 of the existing civil service act. Senator Beck, of Kentucky, urged that the amendment should be broader, so as to forbid the solicitation of Government employees by anyone in any manner. Mr. Hawley, who was not only the author of the amendment but was also chairman of the Civil Serv-

ice Committee and had charge of the Pendleton bill on the floor, replied as follows:

> Our object was to prevent any and every man who got any money from the United States for his work collecting or assessing anything of any value whatever from any other man in the United States who got a cent from the United States for his work. That of itself will remove a vast deal of the evil. *But we went further and said that no human being could, inside of Uncle Sam's buildings or grounds, solicit in any way anybody for a cent.* Then we said that no officer should promote or remove or degrade a man because he did or did not give, and he is liable to a heavy fine and heavy imprisonment if he does anything of that sort.
>
> Now, some want us to go a step further and say that outside if *after the clerk is employed and has left the Government office* and received his salary he chooses to spend $5 in the circulation of Andrew Jackson's antinullification proclamation as a political document, he shall be liable to three years' imprisonment. That is utterly ridiculous, and I shall not vote for anything of the sort. (Cong. Rec., vol. 14, pt. 1, p. 639.)

It would appear that the Senator, who himself introduced the amendment, intended to forbid requests for political contributions except where such request was made by a person not in the Government service after hours of employment and after the officer or employee had left the Government office. Under the rule laid down in *Binns* v. *United States* (194 U. S., 486, 495) it is proper to consider

this statement, made in the course of the debate, as shedding light on the purpose of the law and the evil it was intended to meet. The bill intended to free Government employees absolutely, not only from coercion from their official superiors, but from any political influences while engaged in the discharge of their official duties, and it is entirely clear that it was the intention of Congress, in view of the legislative history of the act, to prevent this being done by means of assessment circulars. Congress may very well have had an eminently practical purpose in mind. It is a simple matter to get a list of Government employees and their places of employment. To put the person levying the assessments to the necessity of finding the home address of every such employee renders the task of levying assessments very much more difficult.

As Senator Hawley pointed out, there are valid objections to interfering with the liberty of an individual by going to the extent of preventing him from contributing to any cause he sees fit after he has finished work and left the Government premises. That Congress may prescribe any rules it sees fit as to what the employees of the Government may do during business hours and as to what may be done in a Government building, was decided in the case of the *United States* v. *Newton* (20 D. C., 226), in which it was held that section 12 was a valid exercise of the power of Congress. In that case there was a direct personal solicitation. It was evidently intended to prevent payments for political purposes extorted through fear of

dismissal, and it was further intended to free Government employees from the annoyance of demands for money during the hours they were engaged in their work in a public building. Farther than that Congress evidently doubted whether it could constitutionally go.

There was nothing indicating an intention to stop short of every prohibition that could be constitutionally made. Nor is there anything indicating an intention inconsistent with this on the part of Congress.

The learned judge who tried the case below said (R., p. 28):

> Section 12 being under consideration by the Senate, an amendment coming in the nature of an amendment to an amendment was offered, which "*Provided*, That the sending by mail, or otherwise, to any such officer or employee of any letter, or note, whether written or printed, containing such solicitation, shall be held to be a solicitation prohibited by this section." This amendment was rejected. This action seems to shed light upon the intention of the Congress. It may be said the amendment was rejected because the acts designated by it were already covered by the general language of the section. If it was the intention to include the use of the mails, the adoption of the amendment would have made it plain and unmistakable; without the amendment, such intention is matter of gravest doubt.

But the wording of the amendment does not justify the construction put upon it by the court. The language is broad enough to prevent the sending of a letter to a Government employee at his home. Not only does the phraseology itself seem clearly to import this meaning, but such also was the understanding of Senator George, who was its author. He said:

> I think that the amendment ought to commend itself to the friends of the bill. It is intended to prevent any evasion of the provisions of the ninth section by sending to the party at his *residence* or post-office letters or notes asking for contributions. (Cong. Record, vol. 14, pt. 1, p. 650.)

The Congress declined to make mailing an assessment circular to an employee at his house an offense. It did not refuse to make the mailing of such circular to a person in a Federal building an offense. In taking this action it may well have been influenced by doubts as to its constitutional power, as to which Senator Harrison said:

> The Senator from Missouri asks what constitutional provision is infringed upon or violated by a provision prohibiting an officer or clerk in one of these Departments from giving to legitimate political purposes. I do not need to point him to a constitutional provision. That instrument is a collection of comprehensive declarations relating to the Government; but I do insist that it is a common principle, applicable as well to the service of

> the United States and its employees as to the service of corporations and individuals and their employees, that when a man has once earned his salary stipulated by law or fixed by contract, has earned it by the stipulated hours of work, it is his, absolutely his; and the principle sought to be introduced here is that the Government may follow that money into his control and dictate the use of it to him. I say that may not be done. The Government of the United States can not prohibit any man from using money that is his for any legitimate purpose. We may prohibit the use of it for illegal purposes, for purposes of fraud or corruption in elections, but I deny that the Government may control the use of the money that it has paid to the man for services rendered. (Cong. Rec., vol. 14, p. 639.)

The corollary of that would seem to be that Congress, however plenary its authority over Government buildings and over Government employees, could not constitutionally forbid a private individual from asking from any other person, whether a Government employee or not, for a subscription to a legitimate object during the hours when the person of whom the request was made was outside the scope of his employment.

The Government also calls attention to the particularly offensive and peremptory character of the demand.

The indictment charges, in the first court, that the defendant sent to one Robert Wood, a clerk employed

in the internal revenue office in the Federal building at Dallas, Tex., a letter, which read as follows (R., p. 1):

6TH REPUBLICAN SENATORIAL DISTRICT,
Dallas, Texas, Sept. 27, 1906.

MR. ROBT. WOOD.

DEAR SIR: It has become necessary for the Republican State executive committee to raise a campaign fund to be expended in furthering the interests of our party in this State, and it devolves upon me, as a member of the Republican State executive committee from your district to at once raise my pro rata of this fund.

You are now occupying the position of deputy in U. S. rev. office at Dallas and receiving a salary of $900.00 per year. I therefore ask you to at once, on receipt of this, remit the sum of $45.00, it being 5 per cent of your salary as dep. U. S. rev. officer.

* * * * *

Send your remittance to Cecil A. Lyon, chairman Republican State executive committee, Sherman, Texas, and fill out and detach the coupon below and mail to my address.

E. S. THAYER,
Member Republican State Executive Committee, 6th Sen. District.

I have this day remitted Cecil A. Lyon, 6th Dist., State chairman, Sherman, Texas, the sum of $———, as per your request above.

———— ————,
———, *Texas.*

On the envelope appeared the following:

"Dallas, Tex.,
"Sept. 27, 4.30 P. M., 1906.
"After 10 days return to
"E. S. Thayer, Terminal Bldg., Dallas, Tex.
"Mr. Robt. Wood, City.
"U. S. Int. Rev. Office."

It is difficult to conceive of a case which would illustrate better the very evils Congress intended to remedy. One important object of the civil service act was to free officers and employees of the Federal Government from all sense of political obligation to the party in power. A peremptory demand calling for a specific percentage of each person's salary coming to all the employees of an office at the same time and place and to the knowledge of all could not fail to create the very feeling of apprehension that refusal to pay might mean loss of employment, which the law intended to permanently remove.

Clearly, the defendant violated the spirit of the act and sought to defeat its purpose. Did he violate the letter? The rule of this court is that all statutes, whether penal or remedial, must receive a reasonable construction so as to give effect to the intention of the legislature.

As was said by the Chief Justice in *United States* v. *Lacher* (134 U. S., 624, 628):

> Though penal laws are to be construed strictly, yet the intention of the legislature must govern in the construction of penal as

> well as other statutes, and they are not to be construed so strictly as to defeat the obvious intention of the legislature.

See also *Johnson* v. *U. S.* (196 U. S., 1).

If, then, the act was one which Congress intended to forbid, the court will place such reasonable construction on the act as will tend to give effect to that intention.

II. The Act Is also Within the Letter of the Statute.

There is nothing in section 12 making the physical presence of the party soliciting within the Federal building an essential element of the offense. The statute does not say, "no person, *being in* any room, etc., shall solicit," but says that "no person shall, *in any* room, etc., solicit," and then adds the significant words, "in any manner whatever."

The word "solicit" is defined in the Standard Dictionary as, "To ask for with some degree of earnestness; to seek to obtain by persuasion or entreaty." Webster defines it as follows: "To make petition to, to apply to for obtaining something, to endeavor to obtain, to plead for." It will not be seriously questioned that solicitation may be by letter. Waiving, for the moment, the question of precisely when and where the act of solicitation is consummated, it is certainly true that if A writes B urging him to contribute money and B receives and reads the letter, A has solicited B for a contribution whether he delivers the letter in person, or by messenger, or sends it through the mail. The only

real question in this case is, when and where was B solicited? Was he solicited when and where the letter was written or mailed or given to a messenger, or when and where it was received and read by him and its contents reached his mind and affected his will? Or, in other words, was the act of solicitation complete when the letter was mailed or does the act of solicitation involve the communication of the request to the party solicited?

It is submitted that the very idea of a solicitation implies communication; that a person has not been "solicited" who has never received or heard of the request. Perhaps the closest analogy to this case is that of a criminal libel. As to that offense Wharton says (Conflict of Laws, sec. 825-b):

> Again, under the operation of this general principle, when a libel is written in one State or country and published in another, the jurisdiction pertains to the latter.

The crime is not complete until the defamatory writing has actually been published or communicated. If the libel is by a letter sent through the mails the letter must have been received and read by some one, just as is the case in the instance of a solicitation of a political contribution. Until this is done the offense is not complete. (Hobart's Rep., 1st Am. Ed., p. 152, *Clutterbuck* v. *Chaffers*, 1 Starkie, 471.)

In the case of *The King* v. *Burdett* (4 B. & A., 95) the defendant composed and wrote the libel in Leicester and sent it to London, where it was pub-

lished. The judges held that the indictment might be found in either county. Abbott, C. J., said: p. 170.

> To write and publish a libel is a misdemeanor compounded of distinct parts, each of which parts (for I am speaking of a published libel) being an act done in prosecution of one and the same criminal intention, is a misdemeanor. And where a misdemeanor consists of such distinct parts, I say, without doubt or hesitation, that the whole may be tried in that county wherein any part can be proved to have been done.

And, in the case of *The King* v. *Johnston* (7 East, 65, 68), Lord Ellenborough expressed the rule as follows:

> One who procures another to publish a libel is, no doubt, guilty of the publication, in whatever county it is in fact published in consequence of his procurement.

The principle on which this doctrine rests has been fully recognized by this court. In the case of *In Re Palliser* (136 U. S., 257), which was an application for a writ of habeas corpus by a person detained in New York charged with an attempt to induce a postmaster in Connecticut, by means of a letter addressed to him at Black Hall, Conn., to do an act forbidden by law in violation of section 5451, Revised Statutes, the court held that the offense was punishable in Connecticut and declined to issue the writ. Justice Gray, speaking for the court, said:

> When an offense is committed by means of a communication through the post-office, the

sender has sometimes, as appears by the cases cited for the petitioner, been held to be punishable at the place where he mails the letter. (Citing authorities.) But it does not follow that he is not punishable at the place where the letter is received by the person to whom it is addressed; and it is settled by an overwhelming weight of authority that he may be tried and punished at that place, whether the unlawfulness of the communication through the post-office consists in its being *a threatening letter.* (*The King* v. *Girdwood,* 1 Leach, 142; S. C. 2 East P. C. 1120; *Esser's Case,* 2 East P. C. 1125; *or a libel; The King* v. *Johnson,* 7 East, 65; S. C. 3 J. P. Smith, 94; *The King* v. *Burdett,* 4 B. & Ald. 95, 136, 150, 170, 184; *Commonwealth* v. *Blanding,* 3 Pick. 304; *In re Buell,* 3 Dillon, 116, 122); *or a false pretense or fraudulent representation;* (*Regina* v. *Leech,* Dearsly, 642; S. C. 7 Cox Crim. Cas. 100; *The Queen* v. *Rogers,* 3 Q. B. D. 28; S. C. 14 Cox Crim. Cas. 22; *People* v. *Rathbun,* 21 Wend. 509; *People* v. *Adams,* 3 Denio, 190, and 1 N.Y. 173; *Foute* v. *State,* 15 Lea (Tenn.) 712).

* * * * *

In the case before us, the offense charged being an offer of money or a tender of a contract for the payment of money, contained in a letter mailed in New York and addressed to a postmaster in Connecticut, to induce him to violate his official duty, it might admit of doubt whether any offense against the laws of the United States was committed until the offer or tender was known to the postmaster and might have influenced his mind. *But*

> *there can be no doubt at all that, if any offense was committed in New York, the offense continued to be committed when the letter reached the postmaster in Connecticut; and that, if no offense was committed in New York an offense was committed in Connecticut;* and that, in either aspect, the District Court of the United States for the District of Connecticut had jurisdiction of the charge against the petitioner. Whether he might have been indicted in New York is a question not presented by this appeal. (136 U. S., 266, 267.)

And this doctrine has been approved in the cases of *Horner* v. *United States* (143 U. S., 207, 214) and *Burton* v. *United States* (202 U. S., 344). In the Horner case the court said:

> It is made a distinct offense in section 3894, as amended, knowingly to cause to be delivered by mail anything forbidden by the statute to be carried by mail; and the same section declares that no circular concerning any lottery or other similar enterprise offering prizes dependent upon lot or chance, and no list of drawings at any lottery or other similar scheme, shall be carried in the mail. The last clause of section 3894, as amended, provides that any offender may be indicted, tried, and punished either in the district at which the unlawful publication was mailed, or to which it is carried by mail for delivery according to the direction thereon, or at which it is caused to be delivered by mail to the person to whom it is addressed. The distinct and separate crime charged in

the fifth count of the indictment was committed in the Southern District of Illinois, and is triable there. This is fully shown by the case *In re Palliser* (136 U. S., 257).

In the Burton case the rule was thus expressed by Mr. Justice Harlan:

> If the sending by the defendant to the Rialto Company from Chicago to St. Louis of the offer above referred to was the beginning of negotiations for an agreement in violation of section 1782, the agreement between the parties was completed at the time of the acceptance of the defendant's offer at St. Louis on November 18, 1902. Then the offense was committed, and it was committed, at St. Louis, notwithstanding the defendant was not personally present in Missouri when his offer was accepted and the agreement was completed.
>
> * * * * *
>
> It can not be maintained, according to the adjudged cases, that the personal absence of the defendant Burton from St. Louis, at the time his offer was accepted, and when the agreement between him and the company was completed and became binding, as between the parties, deprived the Federal court there of jurisdiction. He sent his offer to St. Louis with the intent that it should be there accepted and consummated. Having been completed at that city in conformity with the intention of both parties, an offense was, in the eye of the law, committed there, and when the court below assumed jurisdiction of this

> case it did not offend the constitutional requirement that a crime against the United States shall be tried in the State and district where it was committed (pp. 388, 389).

The principle on which the cases cited by Justice Gray in the Palliser case as sustaining the proposition that the indictment may be found where the letter is received is well stated by Judge Cowan in *The People* v. *Rathbun* (21 Wendell, 509, 529):

> The principle of these cases is that the really guilty man shall be deemed present, and in construction of law the actual perpetrator of the mischief at the place where the crime happens to be consummated.

Judge Lumpkin of Georgia expresses the rule as follows:

> The well-established theory of the law is that where one puts in force an agency for the commission of crime, he, in legal contemplation accompanies the same to the point where it becomes effectual. (*Simpson* v. *State*, 92 Georgia, 41, 43.)

The necessity of this rule is obvious. As was said by Judge Beardsley in *The People* v. *Adams* (3 Denio, 190, p. 207):

> This conclusion is certainly sound in morals and reason, and it should be so in law. * * * A great fraud was thus perpetrated in this State, and maimed or impotent indeed must our law be, if the contriver of the mischief, by whose efforts alone the cheat was effected, can escape punishment on the ground that he was

> out of the State when his fraudulent machinations were concocted and when they took effect within it. * * * Personal presence, at the place where a crime is perpetrated, is not indispensable to make one a principal offender in its commission.

And again:

> But it is the highest injustice that a man should be protected in doing a criminal act here because he is personally out of the State. His act is here, although he is not. (Butler, J., in *The State* v. *Grady*, 34 Conn., 118, 130.)

In *Commonwealth* v. *Smith* (11 Allen, 243) it was held that one who, being in New York, suborns another to commit perjury in Massachusetts under a commission issued to a Massachusetts officer from a New York court can be convicted of perjury in Massachusetts.

The rule that a person standing in one State and shooting across the State line and killing a person in another State is punishable only in the jurisdiction where the shot takes effect has been repeatedly recognized. (*State* v. *Hall*, 19 S. E., 602; *United States* v. *Davis*, 2 Sumner, 482, Fed. Cas. 14932; *State* v. *Carter*, 27 New Jersey Law, 499.) In the case of the *State* v. *Morrow* (40 S. C., 221, 18 S. E., 853,) the defendant was indicted under a statute of South Carolina which made it an offense to administer any drug to a pregnant woman for the purpose of bringing on an abortion. The defendant sent by mail certain drugs from Washington to a woman in South Carolina

as a result of taking which she died. On trial he was convicted, and on appeal the judgment of conviction was affirmed. The court declined to limit the rule above referred to to cases where the offense charged was a crime at common law, laying down the broad doctrine that a person may commit an offense within a State by putting in motion a force which takes effect in the State, or by acting through innocent agents in that State, although the party charged with the crime may never have personally been in the jurisdiction. (See also *Noyes* v. *State*, 41 N. J. Law, 418; *Hatfield* v. *Commonwealth*, 12 S. W., 309.)

"It is well settled that, where one puts into operation a force or power that causes the injury, he is responsible where the wrong is perpetrated, although he may not be actually present." (*Hatfield* v. *Commonwealth*, 12 S. W., 309, 310.)

The principle underlying these cases is recognized not only in municipal but in international law. In a report containing a full discussion of a large number of authorities, made to the Secretary of State in 1887, Prof. John B. Moore, then Assistant Secretary of State, said:

> The principle that a man who outside of a country willfully puts in motion a force to take effect in it is answerable at the place where the evil is done, is recognized in the criminal jurisprudence of all countries. And the methods which modern invention has furnished for the performance of criminal acts in that manner has made this principle one of constantly

> growing importance and of increasing frequency of application. (*Report on Extraterritorial Crime and The Cutting Case*, Department of State, 1887, p. 23.)

For a further full discussion of the authorities on this point, see 44 American State Reports, page 79, note.

It is well settled that one who has advised or solicited the commission of a crime but who before it has been accomplished repents and withdraws such advice and solicitation is not guilty if the person solicited persists in the commission of the offense. Up to the time the wrongful act is done there is the *locus poenitentiæ*. (Greenleaf on Evidence, vol. 3, sec. 45; Wharton Crim. Law, sec. 228; 1 Hale P. C., 618; Am. & E. Enc. Law, vol. 1, 266; *State* v. *Allen*, 47 Conn., 121; *Pinkard* v. *State*, 30 Ga., 757.)

Applying this principle to the case at bar, it would seem clear that if after placing the letter in the mail the defendant, Thayer, had intercepted it before it reached the addressee there would have been no solicitation, and consequently that the solicitation did not take place until the contents of the letter were communicated to the addressee.

The general effect of these numerous decisions is that the offense is committed at the place where the unlawful act takes effect. If, as seems clear, Congress intended to prohibit the demand of political assessments in Federal buildings, it is a matter of no consequence whether the defendant in making his demands for contributions to the Republican cam-

paign fund was actually in the building or not. He willfully and knowingly set in motion an agency which resulted in a demand on a Government officer in a Government building, and on well-settled principles it must be held that he committed the offense on forbidden ground.

Opposed to this mass of authorities we have been able to find nothing but a letter, dated April 14, 1894, addressed to the president of the Civil Service Commission by Mr. Olney, who was, at that time, Attorney-General. (11th Report Civil Service Commission, p. 116.) This letter was written in response to a request of the Civil Service Commission to prosecute certain individuals alleged to have been guilty of soliciting political contributions in Federal buildings by letters sent through the mails.

The report of the district attorney, which immediately follows Mr. Olney's letter in the Report of the Civil Service Commission, shows that, evidently, it was not a case where the evidence warranted a prosecution. The letter, although an expression of opinion on the main question was not necessary to a determination of the matter, rules that mailing a letter to a Federal employee in a Federal building is not a solicitation. The carbon copy of the original letter, on file in the Department of Justice, indicates that it was written in the ordinary course of business by an assistant attorney whose initials it bears. It seems by no means improbable that the Attorney-General himself never gave the matter any careful,

personal attention. Certain it is that the letter is not marked by the discrimination which would be expected from the Attorney-General and especially from Mr. Olney. He bases his opinion largely on the fact that other offenses committed by means of letters sent through the mails are treated by the law as committed at the time when and the place where the letter is deposited. In support of this theory he cites the statutes forbidding the depositing of obscene books, lottery matter, matter relating to schemes to defraud, etc., in the mails. The distinction between cases of that kind and the case at bar is obvious. In those statutes the offense consists of the mere depositing of the matter in the mail. They provide that "any person who shall knowingly deposit or cause to be deposited" shall be punished as specified.

This informal opinion has not been followed by the Department, but was practically overruled by Attorney-General Griggs, under whose direction an attempt was made in 1900 to secure an indictment against certain members of the Republican State committee of Ohio for soliciting subscriptions in Federal buildings by means of letters sent through the mails. It was not an official opinion and does not appear anywhere in the bound volumes of the opinions of the Attorney-General.

III.

In Certain Other Respects the Decision of the Learned Judge Who Heard the Case in the District Court Seems on Principle to be Incorrect.

Nothing is better settled than that in the construction of a statute no words are to be treated as superfluous. The construction placed on this act by the court below placed the narrowest possible limit on the words "solicit in" and disregarded entirely the words "in any manner whatever." Clearly, if the defendant Thayer had gone in person to the Federal building and asked a Government employee for a political contribution, he would have been guilty of the offense denounced in the statute without the use of the words "in any manner whatever." The meaning of these words is entirely clear. The statute plainly makes it an offense to write a letter soliciting contributions and send it by a personal messenger. The same is true if the solicitation is communicated by means of a telephone call made by a person out of the building to some one in the building, and, if it applies to a telephone call, there seems to be on principle no reason why it should not apply to a letter sent through the mails. In both the latter cases the defendant has communicated his solicitation by means of a nonsentient agency.

Again, Judge Meek says (Rec., p. 26):

> The place of reading a letter is a matter entirely beyond the control of the writer, so that, according to the contentions of the Government, a person is guilty of a violation of law or

> he is not guilty according as the addressee may exercise his discretion and pleasure by reading the letter of solicitation within the prescribed precincts or without them.
>
> A construction of a criminal statute, enacted in derogation of our natural rights, which converts acts otherwise innocent into offenses through the subsequent and independent act of another party should not, in my opinion, be entertained.

It would hardly appear that the learned judge could have carefully considered the logical result of the doctrine he here lays down. It frequently happens that offenses are consummated only by the independent act of another party. This is true in every case where murder is committed by administering poison; it was true in the great case of *State* v. *Haywood*, tried in Idaho last summer, where the victim was blown to pieces by a bomb which was exploded by his own act in opening a gate. Nor is it possible to draw any distinction between malum prohibitum and malum in se.

IV.

The Civil Service Commission has consistently construed the act as forbidding assessments by means of letters mailed to Government employees in Government buildings.

The rule that the contemporaneous construction of a statute by the executive officer charged with its administration is entitled to great weight and should be controlling unless it is clearly erroneous is well settled. The reason for the rule is thus stated in the

United States v. *Hill* (120 U. S., 169, 180), quoting from an opinion of the United States Circuit Court for the District of Massachusetts:

> This practice has prevailed for more than forty years, ever since the act of 1842, which first required returns, and has been perfectly well known to everybody conversant with the courts. It was begun by Judge Story and Judge Sprague, and has had the approval of all the judges of this district since their day. It has also had the sanction successively of the Department of the Treasury, the Department of the Interior, and the Department of Justice. Until this suit was brought it has never been called in question by any accounting officer of the Government; nor has Congress seen fit to put a stop to it by legislation. *This construction of the statute in practice, concurred in by all the Departments of the Government, and continued for so many years, must be regarded as absolutely conclusive in its effect.*

The Civil Service Commission is charged with the administration of the civil-service law. In its Eleventh Annual Report to the President, under date of November 28, 1894, it said (p. 22):

> The Commission has always construed the words "solicit in any manner whatever" to apply to solicitation by letter as much as to solicitation in person, and, as a matter of fact, when the law was originally drawn in this fashion the intention of those who proposed it was to have this construction put upon it.

In its sixteenth annual report the Commission published a brief, setting forth its reasons for this ruling. Among other things, there was incorporated therein a letter from ex-Senator Edmunds, who was chairman of the Judiciary Committee of the Senate in 1883. To his committee was referred the bill of Senator Beck prohibiting political assessments. He also took an active part in the debate of the civil-service bill itself. His opinion, therefore, is entitled to the weight to be given to the utterance of a lawyer of exceptional ability on a subject to which he had given careful consideration. We quote his letter in full:

> I have yours of the 24th instant inclosing brief on the subject of soliciting political subscriptions in the departments at Washington, etc.
>
> I entirely agree with the conclusions stated in the brief. I think it is clear that the solicitation of such political aids by means of the post-office is distinctly within the prohibition of section XII of the act to which you refer. The language of the section is, "that no person shall, in any room, or building," etc., "solicit in any manner whatever," etc. It is not that no person being in a room or building shall solicit, but it is that no *solicitation shall be made in any such place, no matter where the person making the solicitation may be.* If, for instance, a person on the street outside the Treasury Department should send a written offer to some person employed within the

> building to pay a price for robbing the vaults or committing any other wrong, it would be clear that his offense was committed within the building, for the writing of the offer would be entirely incomplete until delivered to the person to whom it was addressed. I think it impossible, therefore, to maintain that such acts as you refer to are not within both the letter and the spirit of the act of Congress. (16th Report Civil Service Commission, p. 154.)

In the last edition of the Civil Service Act, Rules and Executive Orders, published by the Commission for the guidance of appointing officers and others there appears the following note to section 12 of the act:

> Soliciting political contributions by means of a letter sent to a Government employee in a Government building, is, in the opinion of the Commission, a solicitation in that building within the meaning of section 12 of the act.

The Congress has for fourteen years had notice of the ruling of the Commission and has taken no action looking to an amendment of the law. May not this ruling, as was said in *United States* v. *Hill*, be regarded as "absolutely conclusive in its effect"?

CONCLUSION.

The Government submits that the ruling of the court below emasculates the statute, and throws wide open the door to the abuses it was intended to

remedy. If solicitation can be made by mail, assessment circulars can be sent into every Government building in the land, and placed in the hands of every Government officer and employee. That means a partial return to the conditions prevailing prior to 1883, which Congress attempted to remedy. A fundamental purpose of the act and its plain language require the reversal of the judgment below.

CHARLES J. BONAPARTE,
Attorney-General.
ALFORD W. COOLEY,
Assistant Attorney-General.

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Supreme Court of the United States

OCTOBER TERM 1907

No. 390.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

EDWARD S. THAYER, DEFENDANT IN ERROR.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

Brief of F. M. ETHERIDGE and J. M. McCORMICK, Attorneys for EDWARD S. THAYER, Defendant in Error.

I.

The sufficiency of the allegations in the indictment to charge the personal presence of the defendant, Thayer, at the time of making the alleged solicitations, in the room or building occupied by the persons solicited, need not be enquired into because of the agreement in the presence of the Court, touching that fact. The bill of exceptions sets forth that: "All parties, plaintiff and defendant, agreed that the defendant, Thayer, at the time of making the alleged solicitation, was not in the said building at Dallas, Texas" (Record, p. 48). The trial court, in passing on the demurrers to the indictment, noted this admission, and read the allegations in its light (Record, p. 25). The several counts particularize the facts constituting the alleged solicitations, and show that in each instance

the means used was the writing and depositing of a letter in the United States mails; so that it may be assumed that the indictment does not charge an offense, unless the offense could be committed by the defendant at a time when he was absent from the inhibited premises, and through the agency of the United States mail facilities.

What might have been the effect in the development of a violation of the act, had the defendant projected into the building his voice from a point within its carrying power, by natural or artificial medium, and thus solicited, or himself without had solicited with visible means those within the building, are inquiries not raised by the allegations of the indictment, nor need the act be examined with a view to determining the criminal effect, had the defendant sent a servant into the building for the purposes of soliciting either by list, letter or oral request, for no such acts are charged against him.

II.

No offense against the laws of the United States arises from the writing by a private citizen of a letter soliciting a political contribution, which is by him enveloped, stamped, addressed and deposited in the United States mail with an intent that the addressee shall read the same in a public building.

We have not been able to find a judicial construction of Section 12 of the Act of January 16th, 1883, entitled: "An Act to regulate and improve the Civil Service of the United States," under which section the indictment is drawn.

Some of the legislative history of the Act will appear from the following excerpts from the Congressional Record:

MR. GEORGE: I offer the following amendment to be added at the end of section 9 of the bill which is section 2 of the amendment of the Senator from Connecticut (Mr. Hawley):

Provided, That the sending by mail or otherwise to any such officer or employe of any letter or note, whether written or printed, containing such solicitation, or the receiving by mail from any such officer or employe of any such contribution, shall be held to be a solicitation or reception prohibited by this section.

MR. EDMUNDS: Read the text, so that we shall see where it comes in and how it all reads.

The Acting Secretary read as follows:

Section 9. That no person shall, in any room or building occupied in the discharge of official duties by any officer or employe of the United States mentioned in this act, or in any navy yard, fort or arsenal, solicit, in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever; provided, that the sending by mail or otherwise to any such officer or employe of any letter, or note, whether written or printed, etc.

MR. GEORGE: I think that amendment ought to commend itself to the friends of the bill. It is intended to prevent any evasion of the provisions of the ninth section by sending to the party at his residence or postoffice letters or notes asking for contributions. I think that necessary in order to make the section effective.

MR. ANTHONY: Then if you want to get a man out of office all you have to do is to send him a letter of this kind, and if he takes it out he has committed an offense. I think the amendment is absurd.

MR. GEORGE: No; the offense is when he responds by a contribution.

MR. ANTHONY: The amendment says "receiving such letter." A letter comes to the postoffice and a man takes it out.

MR. GEORGE: Let it be again read.

THE PRESIDING OFFICER: The amendment will be again read.

The Acting Secretary read the amendment of Mr. George.

MR. LOGAN: If the Senator himself should receive a letter from an employe of the Government with a $10 bill in it, stating that he wanted it to be used for political purposes, under that provision the Senator himself, without having any complicity with this party, would be subject to fine and imprisonment.

MR. GEORGE: It takes two parties to a receiving. There must be a giver and there must be a receiver. The amendment does not prohibit the receiving of letters; it prohibits the receiving of contributions. If a contribution should be sent to me as suggested by the Senator from Illinois, and I should decline to take it, I would not be within the provision of the amendment. It is only when I take it, when I accept it, when I become a party to the illegality by using it or appropriating it, that I become a participant. The amendment, as I remarked, does not apply to the reception of a letter, but

the reception of the contribution as a contribution.

MR. ANTHONY: If a clerk receives a letter with a contribution in it he receives the contribution, and if he takes it out of the office and opens it he receives it.

MR. GEORGE: You can not make a man receive anything.

THE PRESIDING OFFICER: The Chair will call the attention of the Senator from Mississippi to the fact that he has already addressed the Senate twice on this amendment.

MR. HAWLEY: I am not given to quotations from the Latin, but "*Timeo Danaos et dona ferentes.*" I am very much afraid of the men who do not like the bill, and I say so sincerely. I do not know whether the Senator is in favor of it or not; but I mean by that remark that I consider his amendment inimical to the general purpose of the bill. We have discussed over and over again by the day the relations of persons not in office in the Government to this whole subject; and the amendment punishes by a fine of $5,000 and imprisonment for three years a citizen of the United States who happens to send, or if you choose purposely sends a paper addressed to Republicans or Democrats in general, soliciting contributions for carrying on the campaign. I say that that act on the part of a citizen of the United States not in office is not an offense, political or otherwise, for it brings no compulsion on the clerk. It is an act absolutely honest in itself, not a *malum in se*, and should not be made a *malum prohibitum*. There is no wrong in it. There may be high moral merit in it, for the cause may be such as induces a citizen in his belief to exert every positive exertion in behalf of it. He has a right to ask everybody; he has a right to ask the Government employe. What we do object to and have been trying to prevent absolutely, is that a man in the employ of the Government who can oppress that employe shall ask him for money or have anything to do with his giving it. My criticism has already been made here that it is quite ridiculous to say that a man in the service who happens to receive a thing of that sort shall be punished.

THE PRESIDING OFFICER: The question is on the amendment offered by the Senator from Mississippi (Mr. George).

MR. PLUMB: I move to amend the amendment by striking out so much as relates to the receiving of letters or contributions.

THE PRESIDING OFFICER: The Senator from Kansas moves to amend the amendment of the Senator from Mississippi. The amendment to the amendment will be read.

MR. LOGAN: How will it read then?

THE PRESIDING OFFICER: The Secretary will report it.

THE ACTING SECRETARY: It is proposed to strike out "or the receiving by mail from any such officer or employe of any such contribution" and in the last line to strike out the words "or reception;" so as to make the amendment read:

Provided, That the sending by mail or otherwise to any such officer or employe of any letter or note, whether written or printed, containing such solicitation shall be held to be a solicitation prohibited by this section.

MR. LOGAN: Then there would be no sense in it at all. There was very little originally, but there would be none in it then. Any letter containing such solicitation is solicitation!

MR. FRYE: Why not vote it down?

MR. LOGAN: That is the easiest way to do it.

MR. PLUMB: If there are not two offenses described by the amendment, I do not understand the force of the language at all. I propose to eliminate one of them out of it if I can; and if the Senator from Illinois is very much concerned about the manner in which the amendment is left after that, he has the opportunity to amend it and make it so that it will conform to what he regards as sensible.

MR. LOGAN: I am not concerned about it; but I will say to the Senator from Kansas that this solicitation does not affect me. I have not been a contributor to political campaigns for several years, and I have notified all clerks who did ask me not to pay a cent. So you can not lay it to my door. Not only that, but inasmuch as the Senator has mentioned that point I will say that while Senators a few days ago were talking about the new reform, though I do not claim to be a reformer, I sent for a Journal, and I have it here, showing that in 1868, in the House of Representatives, I introduced a bill almost exactly like the bill now before the Senate. This Journal before me shows it.

THE PRESIDING OFFICER: The question is on the amendment of the Senator from Kansas (Mr. Plumb) to the amendment of the Senator from Mississippi (Mr. George).

The amendment to the amendment was rejected.

THE PRESIDING OFFICER: The question recurs on the amendment of the Senator from Mississippi (Mr. George).

The amendment was rejected.

—(Congressional Record, Volume 14, page 650.)

Mr. Kasson, closing the debate on the bill in the House, said in part:

"But gentlemen on the other side of the House say, 'But you do not prevent office-holders from paying something to somebody who is not in office.' That is true, and I am glad it is true. When I am asked to take away the manhood of an American citizen, simply because he holds a petty office under the Government, and to say that he shall not voluntarily pay his money for any lawful purpose, as you and I in and out of Congress may do, and as all citizens may do, I will not consent to degrade his manhood to that condition. He has the right to give or withhold his money freely. *We must only require that no man shall oppress or unduly influence him to do it.* We have no constitutional right to limit his personal liberty. The gentleman from Kentucky has no more right to contribute to a political fund than has the humblest clerk in a Department of this Government. This bill forbids undue influence over the contribution. It allows no official whatever to ask him for such contribution. It allows him, also, the freedom of a citizen to give or refuse.

"*The House bill was intended to go further and prohibit officers of political organizations from asking employes of the Government for contributions for political purposes. The Senate has not seen fit to go that far.* I am still content with this as a great step, which takes away no liberty of the humblest officer, but preserves the right of every citizen to help any cause which he believes to be good and honest, whether religious, educational or political. Under these circumstances I think we were right in reporting the Senate bill and laying aside that which if approved by the House would still have to pass the criticism of the Senate before it should become a law. Better this bill assuredly than merely the chance of a better one." —(Congressional Record, Volume 14, page 866.)

At the time the Act was passed, Sections 1546 and 1784 of the Revised Statutes of the United States were in force, which read as follows:

Sec. 1546. No officer or employe of the Government shall require or request any working man in any navy-yard to contribute or pay any money for political purposes, nor shall any working man be removed or discharged for political opinion; and any officer or employe of the Government who shall offend against the provisions of this section shall be dismissed from the service of the United States.

Sec. 1784. No officer, clerk or employe in the United States Government employ shall at any time solicit contributions from other officers, clerks or employes in the Government service for a gift or present to those in a superior official position; nor shall any such officials or clerical superiors receive any gift or present offered or presented to them as a contribution from persons in Government employ receiving a less salary than themselves; nor shall any officer or clerk make any donation as a gift or present to any official superior. Every person who violates this section shall be summarily discharged from the Government employ.

There was also then in effect the sixth section of the Act of August 15th, 1876, which read as follows:

That all executive officers or employes of the United States not appointed by the President, with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from, any other officer or employe of the Government, any money or property or other thing of value for political purposes; and any such officer or employe who shall offend against the provisions of this section, shall be at once discharged from the service of the United States; and he shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five hundred dollars. (19th Stat. at Large, p. 169.)

It thus appears that prior to the passage of the Act of January 16th, 1883, the law forbade officers or employes of the Government to solicit any working man in the navy-yards to contribute for political purposes, leaving such working man, however, subject to solicitation from other persons for these contributions; that it also forbade officers, clerks and employes soliciting contributions from other officers, clerks or employes with a view to making gifts or presents to superiors, and the receipt by superiors of such gifts from their inferiors in official position, and prohibited executive officers and employes not directly appointed by the President with the advice and consent of the Senate, from requesting, giving to, or receiving from any other officer or employe political contributions.

These several statutes were not repealed, but were strengthened by the Act of January 16th, 1883. The inhibition against soliciting or receiving political contributions from officers or employes was extended to all members of Congress and every officer or employe

of any branch of the Government, by Section 11, and by Section 14 it was made an offense for any officer, clerk or employe to give a contribution to any other officer, clerk or employe, or member of Congress. By Section 13 officers and employes of the Government were protected in their position, rank and compensation from detriment for refusing or withholding political contributions. Sections 11, 13 and 14 deal exclusively with transactions between persons drawing compensation from the United States Treasury, or paid by fees *virtute officii*, and they are obviously intended to prevent the exercise of undue influence upon officers and employes by their suprior officers or employes in inducing political contributions.

These three sections are operative without regard to locality. They left in the officer and employe the right to make political contributions, and in no way limited the right of private citizens holding no office or Government employment to solicit such contributions from officers and employes. However, officers and employes of the United States are usually assembled in rooms and buildings occupied at the same time in the discharge of their official duties by inferior and superior officers and employes; and in order to accomplish the protection of the subordinate officers and employes, it became necessary, as a part of the Act, to prohibit the solicitation by those who still had the right to solicit in the presence and under the observation of superior officers and employes. Further, a part of the evil attending political contributions by Government officers and employes was the loss of official time and disturbance of official duty attending the solicitation and collection of these contributions where official duties were being performed. To avoid that coercion which would attend the solicitation or collection in the presence and under the surveillance of superior officers and employes, and to prevent the interruption of official duty, Congress evidently enacted Section 12, excluding the personal intrusion of solicitors of political contributions into any room or building or place of work where the business of the United States Government was being transacted by its officers and employes.

An effort was made during the progress of the bill through Congress to broaden the scope of Section 12 in two directions. Amend-

ments were offered to prevent the soliciting and reception of contributions *everywhere*, and to add a proviso that the mailing or otherwise sending a written or printed communication to any officer or employe mentioned in the Act, should be held to come within the prohibition of Section 12. Both amendments were rejected.

It is probable Congress within its power could have prohibited all political contributions for use in Federal elections. In view of the decision of this Court in *Ex parte Curtis*, 106 U. S., 371, decided just before the passage of the Civil Service Act, Congress without violence to the Constitution surely could have forbidden the solicitation from, or payment by officers and employes of the National Government for such purposes. And undoubtedly the mails are so far within the control of Congress as that it may close them to all correspondence touching political contributions. Congress did none of these things. No doubt, much could be said in favor of closing the mails to and forbidding all solicitations and contributions for such purposes, or of entirely restraining solicitations and contributions by those in the employment of the Government, but we think no reasoned argument can be urged in favor of the view that Congress, while leaving open officers and employes of the Government to solicitation by those not such and through the mails, yet intended by Section 12 to protect them from letters passing through the postoffice in regular course, which might be read, or which were intended to be read, in a public building or place where official duties were being discharged. The construction of the act contended for by the Government carried to its logical conclusion would virtually close the mails to letters soliciting such contributions addressed to private persons, because the reading of such a letter by the addressee in the postoffice building would consummate an offense. A goodly number of people receive their mail in person at the postoffice, and many have the habit of reading it then and there. As no stress is laid in the indictment on the fact that the addressees were employes of the Government, and this fact seems unimportant under Section 12, the offense might as well be consummated by another as by an employe or officer. Such a construction would seem to carry the criminality of the section far beyond the intent of Congress. It

would accomplish by indirection and construction what Congress expressly refused to enact.

III.

The *intent* of Congress in enacting Section 12 is the law. And before a violation thereof can arise, there must be acts contravening this intent, which are so clearly forbidden by it as to charge notice to the citizen that they are unlawful. The section under discussion creates a crime theretofore unknown to the law. As to the construction of such laws, this Court has said: "Laws which create "crime ought to be so explicit that all men subject to their penalties "may know what acts it is their duty to avoid." (U. S. vs. Sharp Fet. C. C. 118.) Before a man can be punished, his acts must be plainly and unmistakably within the statute. (U. S. vs. Brewer, 139 U. S., 288.)

While penal statutes are not so strictly construed as formerly, yet this very relaxation, which the Courts now indulge, is in favor of reaching the true legislative intent and enforcing the spirit as well as, or rather than, the letter of the law. Again, this Court has said:

"As contended on behalf of the defendant, there can be no con-"structive offenses, and before a man can be punished, his case must "be plainly and unmistakably within the statute. But though penal "laws are to be construed strictly, yet the intention of the legisla-"ture must govern in the construction of penal as well as other stat-"utes, and they are not to be construed so strictly as to defeat the "obvious intention of the legislature. United States vs. Wiltberger, "5 Wheat., 76; United States vs. Morris, 14 Pet., 464; Am. Fur. "Co. vs. United States, 2 Pet., 358, 367."

"It appears to me," said Mr. Justice Story in United States vs. Winn, 3 Summer, 209, 211, "that the proper course, in all these "cases, is to search out and fellow the true intent of the legislature, "and to adopt that sense of the words which harmonizes best with "the context, and promotes in the fullest manner the apparent policy "and objects of the legislature."

"To the same effect is the statement of Mr. Sedgwick, in his

"work on Statutory and Constitutional Law, 2d ed., 282: "The rule "that statutes of this class are to be construed strictly, is far from "being a rigid or unbending one; or rather, it has in modern times "been so modified and explained away as to mean little more than "that penal provision, like all others, are to be fairly construed ac- "cording to the legislative intent as expressed in the enactment; "the courts refusing, on the one hand, to extend the punishment to "cases which are not clearly embraced in them, and, on the other, "equally refusing by any mere verbal nicety, forced construction or "equitable interpretation, to exonerate parties plainly within their "scope."

"This passage is quoted by Baron Bramwell in Attorney Gen- "eral v. Sillem, 2 H. & C., 532, as one "in which good sense, force "and propriety of language are equally conspicuous; and which is "amply borne out by the authorities, English and American, which "he cities." Foley v. Fletcher, 28 L. J. (N. S.) Ex. 100, 106; "Nicholson vs. Fields, 31 L. J. (N. S.) Ex., 233; Hardcastle on "Statutory Law, p. 251.

"And the reason for the less rigorous application of the rule is "well given in Maxwell on the Interpretation of Statutes, 2d ed., p. "318, thus:

"The rule which requires that penal and some other statutes "shall be construed strictly was more rigorously applied in former "times, when the number of capital offenses was one hundred and "sixty or more; when it was still punishable with death to cut down "a cherry tree in an orchard, or to be seen for a month in the com- "pany of gypsies. But it has lost much of its force and importance "in recent times, since it has become more and more generally recog- "nized that the paramount duty of the judicial interpreter is to put "upon the language of the legislature, honestly and faithfully, its "plain and rational meaning, and to promote its object. It was "founded, however, on the tenderness of the law for the rights of "individuals, and on the sound principle that it is for the legisla- "ture, not the Court, to define a crime and ordain its punishment."

IV.

The words of Section 12, taken in connection with the other sections of the law and the statutes *in pari materia* are not so precise and clear as to compel the construction contended for by the Government which would, in our opinion, lead to an absurd consequence. We invoke the rule of construction applicable to such cases which is aptly stated by the Supreme Court of Massachusetts in the case of *Commonwealth vs. Kimball, 24 Pickering, 371*, in this language:

"It is unquestionably a well settled rule of construction, appli-"cable as well to penal statutes as to others, that when the words are "not precise and clear, such construction will be adopted, as shall "appear most reasonable, and best suited to accomplish the objects "of the statute; and where any particular construction would lead "to an absurd consequence; it will be presumed that some excep-"tion or qualification was intended by the legislature, to avoid such "conclusion."

The Court of Appeals of New York, in the *People vs. Commissioners, 95 New York*, 558, approved the Massachusetts case, and expressed the same rule in this language:

"It is the object of all interpretation and construction of stat-"utes to ascertain the intention of the law makers, and this is gen-"erally accomplished by a literal reading of the words used. (Mid-"dleton vs. Greeson, etc., 106 Ind., 24.) But there are many cases "where the words do not express that intention perfectly, but exceed "it or fall short of it, and then it is allowable to adopt what writers "upon the civil law sometimes call a rational interpretation and to "collect the intention from rational or probable conjecture only. It "is also a rule sometimes laid down by text writers that whenever "it happens that the sense of the law, how clear soever it may ap-"pear in the words, would lead to false consequences and unjust de-"cisions, the palpable injustice which would follow from its literal "sense compels an effort to discover some kind of interpretation, not "what the law literally says, but what it means. "Lieber, in his Le-"gal and Political Hermeneutics (p. 11), very aptly defines inter-

"pretation as "the art of finding out the true sense of any form of "words—that is, the sense which their author intended to convey— "and of enabling others to derive from them the same idea which "the author intended to convey." And he defines construction "as "the drawing of conclusions respecting subjects that lie beyond "the direct expression of the text, from elements known, from and "given in the text—conclusions which are in the spirit though not "in the letter of the text." A construction of a statute which leads "to an absurd consequence must always be avoided, as an absurd "purpose is not to be attributed to the law makers. (Commonwealth "vs. Kimball, 24 Pick., 370.)"

V.

If it be conceded that the physical presence of the defendant, or of some one occupying the relation of agent or servant to him in the building at the time the letters containing the solicitations respectively were read, then the Government's case, as made by the indictment, falls for the reason that the postal employes are in law deemed the agents of the addressee, and not of the sender of a letter. The Supreme Court of Massachusetts have said: in the case of Commonwealth vs. Wood, 142 Mass., 462:

"So, if he sent it by mail, when he deposited it in the postoffice, "it passed out of his cotrol into the control of the defendant, and "the postmaster was the agent of the defendant to forward the let- "ter to him. Regina vs. Jones, 4 Cox. C. C., 198."

VI.

The defendant in error respectfully prays that the judgment below be affirmed.

F. M. Kellogg

J. M. McCormick

Attorneys for E. S. Thayer, Defendant in Error.

Sections of Civil Service Act, 1883.

SEC. 11. That no Senator, or Representative, or Territorial Delegate of the Congress, or Senator, Representative or Delegate elect, or any officer or employee of either of said houses, and no executive, judicial, military or naval officer of the United States, and no clerk or employee of any department, branch or bureau of the executive, judicial or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription or contribution for any political purpose whatever, from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States.

SEC. 12. That no person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever.

SEC. 13. No officer or employee of the United States mentioned in this act shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose.

SEC. 14. That no officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk or person in the service of the United States, or to any Senator or Member of the House of Representatives, or Territorial Delegate, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever.

SEC. 15. That any person who shall be guilty of violating any provision of the four foregoing sections shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding five thousand dollars, or by imprisonment for a term not exceeding three years, or by such fine and imprisonment both, in the discretion of the court.

(22 Stat. at Large, 403.)

UNITED STATES v. THAYER.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

No. 390. Argued February 25, 1908.—Decided March 9, 1908.

A man may sometimes be punished in person where he has brought consequences to pass, although he was not there in person. *In re Palliser*, 136 U. S. 257.

A solicitation of funds for campaign purposes made by letter in violation of § 12 of the Civil Service Act of January 16, 1883, c. 27, 22 Stat. 403, is not complete until the letter is delivered to the person from whom the contribution is solicited, and if the letter is received by one within a building or room described in § 12 of the act the solicitation is in that place and the sender of the letter commits the prohibited offense in the prohibited place.

154 Fed. Rep. 508, reversed.

THE facts are stated in the opinion.

The Attorney General and *Mr. Assistant Attorney General Cooley* for plaintiff in error:

The act of mailing the letter soliciting a contribution for

political purposes, was, under the circumstances of this case, one which Congress intended to prohibit, and the court will place such reasonable construction on the statute of Congress as tends to give effect to that intention. *United States* v. *Lacher*, 134 U. S. 624, 628; *Johnson* v. *United States*, 196 U. S. 1.

The act of mailing the letter is also within the letter of the statute. There is nothing in § 12 making the physical presence of the person soliciting within the Federal building an essential element of the offense. The act of soliciting was completed when the letter was received and read by the person to whom it was addressed and to whose mind the demand for money therein contained was addressed. Wharton, Conflict of Laws, §§ 825, 826; Hobart's Rep. (1st Am. ed.) p. 132; *Chamberlock* v. *Chaffers*, 1 Starkie, 471; *The King* v. *Burdett*, 4 B. & A. 95; *The King* v. *Johnston*, 7 East, 65, 68; *In re Pollitzer*, 136 U. S. 257, and cases cited; *Horner* v. *United States*, 143 U. S. 207, 214; *Burton* v. *United States*, 202 U. S. 344; *People* v. *Rathbun*, 21 Wend. 509, 529; *Simpson* v. *State*, 92 Georgia, 41, 43; *People* v. *Adams*, 3 Denio, 190, 207; *State* v. *Grady*, 34 Connecticut, 118, 130.

The general effect of these numerous decisions is that the offense is committed at the place where the unlawful act takes effect. If, as seems clear, Congress intended to prohibit the demand of political assessments in Federal buildings, it is a matter of no consequence whether the defendant in making his demands for contributions to the Republican campaign fund was actually in the building or not. He willfully and knowingly set in motion an agency which resulted in a demand on a Government officer in a Government building, and on well-settled principles it must be held that he committed the offense on forbidden ground.

Mr. J. M. McCormick, with whom *Mr. F. M. Etheridge* was on the brief, for defendant in error:

The legislative history of the act of Congress in question

herein, shows that it was not the intention to prohibit the writing by a private citizen of a letter soliciting a political contribution, which is by him enveloped, stamped, addressed and deposited in the United States mail with an intent that the addressee shall read the same in a public building. Cong. Rec., vol. 14, 650, 866.

The intent of Congress in enacting § 12 is the law. And before a violation thereof can arise, there must be acts contravening this intent, which are so clearly forbidden by it as to charge notice to the citizen that they are unlawful. The section under discussion creates a crime theretofore unknown to the law. Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. *United States* v. *Sharp*, Pet. C. C. 118; *United States* v. *Brewer*, 139 U. S. 288. See also *United States* v. *Wiltberger*, 5 Wheat. 76; *United States* v. *Morris*, 14 Pet. 464; *American Fur. Co.* v. *United States*, 2 Pet. 358, 367; *United States* v. *Winn*, 3 Sumner, 209, 211.

The words of § 12, taken in connection with the other sections of the law and the statutes *in pari materia* are not so precise and clear as to compel the construction contended for by the Government which would lead to an absurd consequence. *Commonwealth* v. *Kimball*, 24 Pick. 371.

If the physical presence of the defendant, or his agent or servant in the building at the time the letters containing the solicitations respectively were read, was necessary, then the Government's case falls for the reason that the postal employés are in law deemed the agents of the addressee, and not of the sender of a letter. *Commonwealth* v. *Wood*, 142 Massachusetts, 462, and see also *Regina* v. *Jones*, 4 Cox C. C. 198.

Mr. Justice Holmes delivered the opinion of the court.

This is an indictment for soliciting a contribution of money for political purposes from an employé of the United States in a post office building of the United States occupied by the

employé in the discharge of his duties. By the Civil Service Act of January 16, 1883, c. 27, § 12, 22 Stat. 403, 407, "No person shall, in any room or building occupied in the discharge of official duties by any officer or employé of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of any value for any political purpose whatever." By § 13 a penalty is imposed of fine, imprisonment, or both. The indictment is in eleven counts, and charges the sending of letters to employés, which were intended to be received and read by them in the building and were so received and read by them in fact. It is admitted that the defendant was not in the building. There was a demurrer, which was sustained by the District Court on the ground that the case was not within the act. 154 Fed. Rep. 508. The only question argued or intended to be raised is whether the defendant's physical presence in the building was necessary to create the offense.

Of course it is possible to solicit by letter as well as in person. It is equally clear that the person who writes the letter and intentionally puts it in the way of delivery solicits, whether the delivery is accomplished by agents of the writer, by agents of the person addressed, or by independent middlemen, if it takes place in the intended way. It appears to us no more open to doubt that the statute prohibits solicitation by written as well as by spoken words. It forbids all persons to solicit "in any manner whatever." The purpose is wider than that of a notice prohibiting book peddling in a building. It is not, even primarily, to save employés from interruption or annoyance in their business. It is to check a political abuse, which is not different in kind, whether practiced by letter or by word of mouth. The limits of the act, presumably, were due to what was considered the reasonable and possibly the constitutional freedom of citizens, whether officeholders or not, when in private life, and it may be conjectured that it was upon this ground that an amendment of broader scope was

rejected. If the writer of the letter in person had handed it to the man addressed, in the building without a word, and the latter had read it then and there, we suppose that no one would deny that the writer fell within the statute. We can see no distinction between personally delivering the letter and sending it by a servant of the writer. If the solicitation is in the building the statute does not require personal presence, so that the question is narrowed to whether the solicitation alleged took place in the building or outside.

The solicitation was made at some time, somewhere. The time determines the place. It was not complete when the letter was dropped into the post. If the letter had miscarried or had been burned, the defendant would not have accomplished a solicitation. The court below was misled by cases in which, upon an indictment for obtaining money by false pretenses, the crime was held to have been committed at the place where drafts were put into the post by the defrauded person. *Commonwealth* v. *Wood*, 142 Massachusetts, 459, 462; *Regina* v. *Jones*, 4 Cox C. C. 198. But these stand on the analogy of the acceptance by mail of an offer and throw no light. A relation already existed between the parties, and it is because of that relation that posting the letter made the transaction complete. See *Brauer* v. *Shaw*, 168 Massachusetts, 198, 200. Here a relation was to be established, just as there is at the first stage of a contract when an offer is to be made. Whether or not, as Mr. Langdell thinks, nothing less than bringing the offer to the actual consciousness of the person addressed would do, Contr. § 151, certainly putting a letter into a post office is neither an offer nor a solicitation. "An offer is nothing until it is communicated to the party to whom it is made." *Thomson* v. *James*, 18 Ct. of Sess. Cas. (2d Series), 1, 10, 15. Therefore, we repeat, until after the letter had entered the building the offense was not complete, but, when it had been read, the case was not affected by the nature of the intended means by which it was put into the hands of the person addressed. Neither can the case be affected by specu-

lations as to what the position would have been if the receiver had put the letter in his pocket and had read it later at home. Offenses usually depend for their completion upon events that are not wholly within the offender's control and that may turn out in different ways.

No difficulty is raised by the coupling of solicitation and receipt in the statute. If receipt required personal presence, it still would be obvious that "solicit in any manner whatever" was a broader term. But the cases that have been relied upon to establish that the solicitation did not happen in the building, although inadequate for that, do sufficiently show that the money might be received there without the personal presence of the defendant. If, in answer to the defendant's letter, the parties addressed had posted money to him in the building where they were employed, the money undoubtedly would have been received there. To sum up, the defendant solicited money for campaign purposes, he did not solicit until his letter actually was received in the building, he did solicit when it was received and read there, and the solicitation was in the place where the letter was received. We observe that this is the opinion expressed by the Civil Service Commission in a note upon this section, and the principle of our decision is similar to that recognized in several cases in this court. *In re Palliser*, 136 U. S. 257, 266; *Horner* v. *United States*, 143 U. S. 207, 214; *Burton* v. *United States*, 202 U. S. 344, 387, *et seq.* We do not cite them more at length, as the only dispute possible is on the meaning of the particular words that Congress has used.

We may add that this case does not raise the questions presented by an act done in one jurisdiction and producing effects in another which threatens the actor with punishment if it can catch him. Decisions in that class of cases, however, illustrate the indisputable general proposition that a man sometimes may be punished where he has brought consequences to pass, although he was not there in person. They are cited in *In re Palliser, supra*. Here the defendant was

within and subject to the jurisdiction of the United States to the extent of its constitutional power, and the power is not in dispute. *Ex parte Curtis*, 106 U. S. 371; *United States* v. *Newton*, 9 Mackey (D. C.), 226.

Judgment reversed.